

Exhibit ZZ

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09:29:52 1 Judge Kennelly, November 23, 2016, 9:30 a.m. call and case on
09:30:48 2 trial, Fields v. City of Chicago.

09:41:52 3 THE CLERK: Case number 10 C 1168, Fields v. City of
09:41:56 4 Chicago.

09:41:57 5 THE COURT: Good morning.

09:41:59 6 MR. LOEVY: Good morning, your Honor. Jon Loevy,
09:42:01 7 Steve Art, Anand Swaminathan, and Candace Gorman on behalf of
09:42:06 8 Nate Fields.

09:42:06 9 MR. NOLAND: Good morning, your Honor. Daniel
09:42:06 10 Noland, Terry Burns and Paul Michalik on behalf of the city
09:42:09 11 and Joe Murphy.

09:42:09 12 MR. KULWIN: Good morning, your Honor. Shelly Kulwin
09:42:11 13 on behalf of Mr. O'Callaghan. Ms. Katz had personal
09:42:22 14 emergency. She is not here.

09:42:24 15 THE COURT: Is she okay?

09:42:25 16 MR. KULWIN: I got a panic phone call that something
09:42:26 17 happened with her apartment.

09:42:27 18 THE COURT: Are you good to get the jury out?

09:42:29 19 MR. LOEVY: We are. We are going to have to address
09:42:31 20 the witness protection, witness intimidation. You said we
09:42:34 21 were going to address that in the morning. Remember, they
09:42:36 22 were going to respond to that.

09:42:38 23 We do think they have opened the door to the CRs on
09:42:41 24 O'Callaghan. You told us to defer that.

09:42:43 25 THE COURT: I told you to wait until the end of Mr.

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09:42:47 1 Kulwin's examination.

09:42:48 2 MR. LOEVY: We did. And we want after Mr.

09:42:52 3 O'Callaghan testifies shows the 155 feet. It might makes
09:42:55 4 sense.

09:42:55 5 THE COURT: Feet?

09:42:56 6 MR. LOEVY: In the hall the 155 feet. There was a
09:42:59 7 question about whether you'd show him 155 plus 80 but Randy
09:43:04 8 Langston on the stand said I never showed 80.

09:43:08 9 THE COURT: If I am going to show somebody 155 feet,
09:43:11 10 there has to be some testimony at some point in time about 80
09:43:14 11 feet. We are going to show people what 80 feet is too. We
09:43:18 12 are either going to do all of it or none of it.

09:43:22 13 MR. LOEVY: Fine.

09:43:23 14 THE COURT: Anybody have a problem?

09:43:25 15 MR. KULWIN: Other than the problems expressed
09:43:27 16 already, no.

09:43:27 17 THE COURT: What's that?

09:43:29 18 MR. KULWIN: I objected to the whole process, the
09:43:32 19 hallway, different lighting.

09:43:33 20 THE COURT: I can explain that. This is something
09:43:37 21 that's commonly done in courtrooms. Mr. Kulwin you and I
09:43:41 22 tried a case on the same side in which something like that was
09:43:45 23 done.

09:43:45 24 MR. KULWIN: You went out and measured the scene.

09:43:49 25 THE COURT: We had an investigator who was not

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09:43:51 1 exactly a crack investigator.

09:43:53 2 MR. KULWIN: You did a good job measuring the scene.

09:43:56 3 THE COURT: So I'll explain all that. It's not
09:43:59 4 intended to duplicate conditions under which people viewed
09:44:02 5 anything. It's just simply intended to show you what 80 feet
09:44:05 6 is and what 15 feet it so that we don't have you trying to
09:44:11 7 measure this on your own.

09:44:13 8 MR. KULWIN: I will say, we are going to be file a
09:44:15 9 motion, we are going to move to bar any designations of
09:44:21 10 Mr. Beseth. He was the investigator. You made it pretty
09:44:23 11 clear that if you published testimony from the state court
09:44:26 12 trial, publish it, not just show what they read, but publish
09:44:31 13 it. Mr. Loevy has beaten this horse into the ground with
09:44:35 14 every witness has been out there. He took you out to the
09:44:38 15 baseball field, he measured it exactly.

09:44:40 16 THE COURT: Don't worry about that. If somebody
09:44:42 17 wants to actually read Baseth's testimony.

09:44:46 18 MR. KULWIN: I have a slight disadvantage on the
09:44:50 19 witness protection.

09:44:51 20 THE COURT: Ms. Katz is working on it?

09:44:54 21 MR. KULWIN: Yes. She has all the designations.

09:44:59 22 THE COURT: Do you think you are going to get to
09:45:01 23 lunch?

09:45:01 24 MR. LOEVY: Your Honor.

09:45:01 25 THE COURT: Do you think you are going to get to

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09:45:04 1 lunch?

09:45:05 2 MR. KULWIN: I think I might. I might not.

09:45:09 3 THE COURT: What you were about to say.

09:45:10 4 MR. LOEVY: The cross is now in the third day, he
09:45:13 5 told us yesterday --

09:45:14 6 THE COURT: You're going to complain that it's too
09:45:17 7 long. You lack standing.

09:45:18 8 MR. LOEVY: He is now approaching.

09:45:19 9 THE COURT: Or it's unclean hands or something like
09:45:22 10 that.

09:45:22 11 MR. LOEVY: He is preaching the line. He told us
09:45:25 12 yesterday he had an hour.

09:45:26 13 THE COURT: This is interesting. The interesting
09:45:27 14 part about it is I can tell you precisely how long the
09:45:31 15 examination was. I apologize for not sending by the way the
09:45:36 16 chart from last night. The time that was charged for the
09:45:41 17 plaintiff's examination of Mr. O'Callaghan and 332.minutes,
09:45:55 18 what is that, 6 and a half hours, 5 hours and 32 minutes. I'm
09:45:59 19 sorry. There's more. Add 98 to that. That would be 430.
09:46:06 20 That's 7 hours and 10 minutes.

09:46:07 21 MR. LOEVY: Your Honor, our point was.

09:46:09 22 THE COURT: And I'm just going to tell you that Mr.
09:46:13 23 Kulwin's examination has been so far 248, so.

09:46:23 24 MR. LOEVY: Our point was, your Honor, he has twice
09:46:25 25 now explained his canvass, twice explained the building. I

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09:46:28 1 feel like there's a lot of redundancy. We have now covered
09:46:32 2 every subject in the case and he told us yesterday he had
09:46:35 3 within hour left.

09:46:36 4 THE COURT: I have been keeping track and doing my
09:46:38 5 best to keep track of the subjects that have been covered. I
09:46:40 6 will deal with motions or with objections on the ground of,
09:46:44 7 you know, undo duplication, Rule 403 or whatever when I get
09:46:49 8 them as I get them. I am not going to deal with those right
09:46:54 9 now. I am just not.

09:46:55 10 MR. LOEVY: Your Honor.

09:46:55 11 THE COURT: And by the way, if what you're about to
09:46:58 12 tell me is that somebody is trying to filibuster to get over,
09:47:01 13 everybody has been filibustering in this case. Everybody has
09:47:04 14 been filibustering in this case. And by the way, by raising
09:47:08 15 this time now, you are using.

09:47:12 16 MR. LOEVY: We have two witnesses today.

09:47:14 17 THE COURT: Did you tell him you had one hour.

09:47:16 18 MR. KULWIN: I told him I might have an hour, I did
09:47:20 19 not guarantee an hour.

09:47:21 20 MR. LOEVY: He didn't guarantee us. We have two
09:47:24 21 witnesses.

09:47:24 22 THE COURT: Who?

09:47:25 23 MR. LOEVY: Bagdalek and Hickey.

09:47:29 24 THE COURT: Are those city people?

09:47:31 25 MR. KULWIN: Bagdalek is the one.

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09:47:33 1 THE COURT: All right. I am not too worried about
09:47:36 2 it.

09:47:36 3 MR. LOEVY: The representation was it was an hour.

09:47:38 4 THE COURT: Let's get the jury out here. If a
09:47:40 5 question comes up before the break, the question comes up
09:47:43 6 about this what I'll call witness protection issue, if Mr.
09:47:47 7 Kulwin asks a question, make an objection, ask for a sidebar
09:47:50 8 and I will have to rule on it then.

09:47:52 9 MR. KULWIN: It's not. Finally, Judge, did I hear
09:47:54 10 you say you are leaving at 2:00?

09:47:56 11 THE COURT: Potentially, 2:00 or 3:00. The acting
09:48:06 12 chief judge has declared the judge by 12:00. But he does not
09:48:10 13 have authority over individual.

09:48:12 14 MR. KULWIN: It's great. Now I don't have to set up
09:48:14 15 a Thanksgiving table or anything.

09:48:56 16 (The jury enters the courtroom.)

09:48:56 17 THE COURT: Everybody can sit down. Mr. O'Callaghan,
09:48:58 18 you understand you are still under oath.

09:49:00 19 THE WITNESS: I do.

09:49:01 20 THE COURT: All right. Ladies and gentlemen, we are
09:49:03 21 ready to resume with Mr. Kulwin's examination of Mr.
09:49:06 22 O'Callaghan.

09:49:08 23 - - -

09:49:08 24 DAVID O'CALLAGHAN, CROSS-EXAMINATION CONTINUED

09:49:08 25 BY MR. KULWIN:

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09:49:15 1 Q. Thank you, your Honor and good morning.

09:49:16 2 Dave, let's start out, you were asked a number of
09:49:29 3 questions about prosecution theories, was this your theory,
09:49:34 4 was that your theory at the different trials. Do you remember
09:49:36 5 those questions?

09:49:37 6 A. Yes.

09:49:37 7 Q. Do you create theories for the prosecution?

09:49:39 8 A. No.

09:49:41 9 Q. Did you -- were you the one who developed the prosecutor's
09:49:45 10 theory at the '86 trial?

09:49:47 11 A. No.

09:49:47 12 Q. Did you develop the prosecutor's theory at the 2009 trial?

09:49:51 13 A. Not at all. No participation, no.

09:49:55 14 Q. You said, and I just want to clarify for the jury in case
09:50:00 15 any of them are wondering, they may not be, but I want to be
09:50:03 16 clear, you said a number of times that you were quote-unquote
09:50:06 17 excluded from the 86 and 2009 trials. Do you remember making
09:50:09 18 those statements?

09:50:09 19 A. Yes.

09:50:10 20 Q. You didn't do anything wrong. Can you explain to the jury
09:50:13 21 what excluded means?

09:50:14 22 A. When you're in a trial and you're going to be a witness,
09:50:19 23 especially a police officer, the judge will in state court
09:50:25 24 will say you're excluded, you're not to sit while A, B, C D
09:50:33 25 testifies so then you come in separate, testify, and then most

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09:50:36 1 of the time you're excluded again. You are not allowed in the
09:50:39 2 courtroom wheel all the witnesses are testifying. That's why
09:50:43 3 I'm saying I don't know what each person said because I didn't
09:50:47 4 view it.

09:50:47 5 Q. Okay. There was some questioning that occurred over the
09:50:50 6 last couple days about some interview with Randy Langston and
09:50:54 7 the state's attorney in I believe it's in 2000. Did you
09:50:59 8 attend that interview?

09:51:00 9 A. No, I don't believe I did.

09:51:02 10 Q. Okay. Let's put it up on the board, Plaintiff's Exhibit
09:51:05 11 132.

09:51:06 12 THE COURT: Is this from the computer?

09:51:07 13 MR. KULWIN: The ELMO, please.

09:51:09 14 THE COURT: The ELMO. There you go.

09:51:14 15 MR. KULWIN: Thanks, Judge.

09:51:15 16 BY MR. KULWIN:

09:51:15 17 Q. Does this indicate who is at -- does this indicate who is
09:51:19 18 at the interview right below -- right above where it says
09:51:23 19 witness Randy Langston?

09:51:23 20 A. Yes, state's attorney Mark /PWOURS and David Kelley. I
09:51:31 21 wasn't there.

09:51:31 22 Q. Okay. Thanks.

09:51:33 23 You were asked some questions -- you were asked all
09:51:43 24 sorts of questions for a long, long time about different
09:51:50 25 evidence that was introduced against Mr. Fields at his

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09:51:55 1 criminal trial, the ability of the eyewitnesses to see, the
09:52:00 2 photo array, any things that you did at the lineup, do you
09:52:03 3 remember all of it, there were lots and lots of questions. Do
09:52:06 4 you remember all that?
09:52:06 5 A. Yes.
09:52:06 6 Q. Okay. And it went on for a long time?
09:52:09 7 THE COURT: Mr. Kulwin, enough of that.
09:52:12 8 BY MR. KULWIN:
09:52:13 9 Q. Okay. Mr. O'Callaghan, did you testify at Mr. Fields'
09:52:20 10 criminal trial in 1986?
09:52:22 11 A. I did.
09:52:23 12 Q. And at my request, did you review your testimony from that
09:52:27 13 trial?
09:52:28 14 A. I ran through it, yes.
09:52:30 15 Q. And in very brief summary points, can you tell -- give us
09:52:37 16 a couple of the highlights from that trial, very brief?
09:52:40 17 THE COURT: From his testimony?
09:52:41 18 MR. KULWIN: From his testimony, your Honor.
09:52:43 19 THE WITNESS: I would have been introducing the
09:52:47 20 procedure that we discussed here, how the lineup photos were
09:52:52 21 done, how the lineups were done, and then maybe also his
09:52:56 22 statement, that would be very brief.
09:53:01 23 BY MR. KULWIN:
09:53:02 24 Q. Let me see if I can refresh your recollection. Did you
09:53:04 25 talk about the photo array and the identification by the

09:53:05 1 witnesses?

09:53:05 2 A. That's what I just said.

09:53:06 3 Q. Okay. And their identifications in the lineup?

09:53:09 4 A. Yes.

09:53:09 5 Q. Identifying Mr. Fields?

09:53:10 6 A. Yes.

09:53:11 7 Q. Okay. Let me ask you a question. At the criminal trial

09:53:17 8 concerning the issue of what you did with respect to the

09:53:20 9 lineups and with respect to the photo array and with respect

09:53:25 10 to the identification of Mr. Fields at his criminal trial

09:53:29 11 where he was facing the death penalty, how many questions did

09:53:32 12 Mr. Fields' criminal defense lawyer ask you at that trial?

09:53:35 13 A. If I recall correctly, Mr. Smeeton was his defense

09:53:42 14 attorney and I don't believe -- he didn't cross me. The other

09:53:45 15 attorney crossed me.

09:53:46 16 Q. Did he ask you none?

09:53:48 17 MR. LOEVY: Objection, leading, your Honor.

09:53:49 18 THE COURT: Overruled.

09:53:50 19 BY MR. KULWIN:

09:53:51 20 Q. Did he ask you any questions at all?

09:53:53 21 A. The best I recall -- I don't recall Mr. Smeeton crossing

09:53:56 22 me. Only --

09:53:58 23 Q. Mr. Swano?

09:53:59 24 A. Mr. Swano is correct.

09:54:01 25 Q. And after Mr. Fields' lawyer didn't cross you at all,

09:54:08 1 Mr. Swano asked you some of the same questions at the criminal
09:54:11 2 trial that Mr. Loevy has asked you here, correct?

09:54:14 3 A. Yes, they would have been basically the same type of
09:54:18 4 questions.

09:54:18 5 Q. All right. Now, you were asked a couple of questions
09:54:31 6 about this crossed out lineup and I erred and said it was in
09:54:37 7 the permanent retention file. Let me show you what's marked
09:54:40 8 as Defendant's Exhibit 58, if I can.

09:54:46 9 THE COURT: You say it's in evidence?

09:54:47 10 MR. KULWIN: It is.

09:54:48 11 THE COURT: Do you need your computer back then?

09:54:50 12 MR. KULWIN: Can we get the computer again, please?

09:55:16 13 While she is doing that, can I first have the ELMO,
09:55:19 14 please?

09:55:20 15 THE COURT: Sure.

09:55:20 16 BY MR. KULWIN:

09:55:21 17 Q. I am putting up on the ELMO the cover of that exhibit.

09:55:25 18 And is this the investigative file from the police department?

09:55:29 19 A. Yes, it's a jacket, homicide 84 meaning the 44th homicide
09:55:38 20 of that year.

09:55:39 21 Q. Okay. And is all the information --

09:55:41 22 A. In our area, just our area.

09:55:44 23 Q. Based on your knowledge, was this information produced to
09:55:47 24 the criminal defendant in the case?

09:55:48 25 A. Yes.

09:55:48 1 Q. Okay. Now, can we pull it up?

09:55:56 2 MR. KULWIN: And now the computer, Judge.

09:55:59 3 Did I give you the right page? Yeah, that's the
09:56:02 4 page.

09:56:05 5 Can you blow this up at the bottom?

09:56:08 6 BY MR. KULWIN:

09:56:10 7 Q. Now, this is where the photographer made the error. Was
09:56:15 8 this document within -- this document is in the investigative
09:56:18 9 file, right?

09:56:19 10 A. Correct.

09:56:20 11 Q. So last question on this point, none of the witnesses
09:56:27 12 based on your recollection from all the documents you have
09:56:30 13 reviewed have ever testified that they identified Ray Ferguson
09:56:35 14 that you recall, correct?

09:56:35 15 A. Yes, they did not do that.

09:56:37 16 Q. All right. I want to go to a different topic that was
09:56:49 17 spent some time on, and that's this matter of the Vaughn/White
09:56:55 18 case.

09:56:55 19 Now, the Vaughn/White case is a separate, completely
09:57:00 20 different case than the Smith/Hickman case?

09:57:03 21 A. Yes, it's just totally separate case, not interrelated.

09:57:11 22 Q. There's a lot of names and details. Let's start
09:57:14 23 clarifying some things.

09:57:16 24 First of all, when did the Vaughn/White murders
09:57:19 25 occur?

09:57:23 1 A. I believe the date is 28 March 1985. I could be off a day
09:57:29 2 or two.

09:57:33 3 MR. KULWIN: Can I use this thing?

09:57:35 4 THE COURT: Yeah.

09:57:52 5 BY MR. KULWIN:

09:57:54 6 Q. So when did the murders take place?

09:57:56 7 A. If my memory serves me right, it's 28 March 1985, about
09:58:04 8 5:00 to 5:20 something in the morning.

09:58:11 9 Q. Excuse my bad handwriting.

09:58:13 10 Okay. Now, do you know who the lead detective was on
09:58:22 11 the Vaughn/White case?

09:58:23 12 A. I believe the lead detectives, it was about five out at
09:58:28 13 the scene, but the key two would be liberty and /TKPWRERB ham
09:58:35 14 I believe were the key guys that started that scene.

09:58:38 15 Q. And after that, did someone else become the lead?

09:58:41 16 A. As it progressed along, I would say Robertson and Kober
09:58:50 17 became the leads as it evolved and new information came
09:58:53 18 forward.

09:58:53 19 Q. That's Robertson and Kober, Kober?

09:58:59 20 A. Yeah, they are involved right after and later.

09:59:02 21 Q. Just answer the question.

09:59:03 22 Now, what did -- when did you get involved at all?
09:59:08 23 When was the first time you got involved if you recall?

09:59:11 24 A. I believe the night of the 29th.

09:59:15 25 Q. March 29th?

09:59:16 1 A. Yes.

09:59:17 2 Q. Okay. By the way, your initials are, do you use the O.?

09:59:34 3 A. DOC, doc.

09:59:37 4 Q. All right.

09:59:39 5 Now, let me show you what's been marked as

09:59:43 6 Plaintiff's Exhibit 10 on computer, Judge?

09:59:47 7 THE COURT: Okay.

09:59:48 8 MR. KULWIN: Thank you, Judge.

09:59:49 9 BY MR. KULWIN:

09:59:55 10 Q. Got it up there. Can you see it okay?

09:59:58 11 A. I do.

09:59:58 12 Q. Okay. Is this -- first of all, does this report relate to

10:00:05 13 the Vaughn/White case?

10:00:06 14 A. Yes.

10:00:07 15 Q. And looking at this report, can you tell us what time, if

10:00:14 16 it shows, the precise time when the murders occurred?

10:00:17 17 A. 28 March 85 between 0500 and 0521.

10:00:25 18 Q. Okay. Where is the 0500 to 052, where does it say?

10:00:30 19 A. Right top, right-hand corner.

10:00:32 20 Q. That's 5:00 a.m. to 5:21 a.m.?

10:00:35 21 A. Correct.

10:00:35 22 Q. Okay. Now, according to the report, who are the

10:00:41 23 detectives that went out to the crime scene?

10:00:44 24 A. Al Grefsheim and Jerry Liberty.

10:00:48 25 Q. And where do you see their names?

10:00:50 1 A. They're at the bottom of the report, right there.

10:00:59 2 Q. Were you one of the detectives who went out to the

10:01:04 3 Vaughn/White scene, murder scene that night -- that morning on

10:01:08 4 March 28th?

10:01:08 5 MR. LOEVY: Objection, asked and answered, your

10:01:10 6 Honor.

10:01:10 7 THE COURT: Sustained.

10:01:11 8 BY MR. KULWIN:

10:01:12 9 Q. Does the report reflect that you were one of the

10:01:15 10 detectives who went out on the scene that day?

10:01:18 11 MR. LOEVY: Same objection, your Honor.

10:01:19 12 THE COURT: Overruled.

10:01:21 13 BY MR. KULWIN:

10:01:21 14 Q. What was the answer, sir?

10:01:23 15 THE COURT: Does the report reflect that you were one

10:01:24 16 of the detectives that went out there?

10:01:29 17 THE WITNESS: It does not.

10:01:30 18 BY MR. KULWIN:

10:01:30 19 Q. Now, you mentioned you conducted a lineup. Plaintiff's

10:01:34 20 Exhibit 104.

10:01:37 21 Do you recognize this?

10:01:38 22 A. I do.

10:01:40 23 Q. What is it?

10:01:41 24 A. This would be a lineup supp that there's eight subjects in

10:01:49 25 the lineup and two potential offenders in this lineup at that

10:01:53 1 time were believed to be offenders.

10:01:54 2 Q. Okay. Let's blow that up.

10:01:58 3 This list of people, who are they?

10:02:00 4 A. Number one is council --

10:02:05 5 Q. Not their identity, as a group, who are they?

10:02:09 6 A. Two suspects and six fillers that we spoke about before,
10:02:14 7 the type of people that come out of the lock up.

10:02:18 8 Q. In the lineup that's being conducted?

10:02:20 9 A. Yes.

10:02:20 10 Q. All right. Now, tell us what your role was in the lineup?

10:02:26 11 A. As I described before that, room, the viewing room, my
10:02:32 12 role was to be with the little girl and the little boy who
10:02:37 13 were viewing it at separate times.

10:02:40 14 Q. Okay. Let's stop you there for a second.

10:02:42 15 Now, in this group here, who -- blow this up again,
10:02:47 16 please.

10:02:47 17 Who were the two suspects?

10:02:49 18 A. Number one, council Glenn who was Squeaky and number two
10:02:57 19 g-l-e-n-n, Hughes, I take it back, I apologize, Jackson, who
10:03:04 20 was known as Pumpkin on the street.

10:03:06 21 Q. So you got Pumpkin is Jackson. And Glenn is Squeaky?

10:03:20 22 A. Yeah, his nickname was Squeaky on the street.

10:03:26 23 Q. I might have spelled this wrong. Anyway, you get the
10:03:30 24 point, Squeaky. You got Pumpkin and Squeaky.

10:03:35 25 Do you recall what happened during the lineup?

10:03:36 1 A. Yes.

10:03:38 2 Q. Can you tell the ladies and gentlemen of the jury first of

10:03:41 3 all who saw the lineup first?

10:03:43 4 A. The little girl, 12 year old.

10:03:47 5 Q. What was her name?

10:03:48 6 A. Sheree Vaughn.

10:03:49 7 Q. Okay. Tell us what happened?

10:03:52 8 A. Sheree came in, she did not pick out Squeaky, council

10:03:58 9 Glenn. She looked at Jackson and then said he looks like one

10:04:06 10 of the guys. She did not give straight out bang, that's him.

10:04:12 11 Q. Okay. And then by the way, does this report accurately

10:04:16 12 summarize what happened at the lineup? I am going to show you

10:04:20 13 the whole thing, but does it accurately summarize it?

10:04:22 14 A. Yes.

10:04:22 15 Q. All right.

10:04:25 16 A. Can you pop to page 2?

10:04:28 17 Q. Can you go to the next page. He wants to be sure. Can

10:04:31 18 you blow that up, the whole thing. There you go?

10:04:34 19 A. Then I don't have to speak from my memory.

10:04:38 20 Q. You can read it. Take your time. Ready?

10:04:49 21 A. Yes.

10:04:50 22 Q. After Sheree Vaughn viewed the lineup in this Vaughn/White

10:04:55 23 case, did Michael view the lineup?

10:04:57 24 A. Michael was 9 and that's --

10:05:01 25 Q. Tell us what happened when Michael viewed the lineup?

10:05:04 1 A. Michael came in, looked at the lineup, hugged my leg,
10:05:16 2 cried on it and said why did they do that to my mama. And
10:05:24 3 then he picked out Pumpkin.
10:05:27 4 Q. Okay. Ready?
10:05:32 5 Okay. Now, when Sheree Vaughn looked at the lineup,
10:05:39 6 did you do anything to try to convince her to be more firm in
10:05:42 7 her identification?
10:05:43 8 A. No.
10:05:44 9 Q. When -- after Michael picked out one of the two fellows
10:05:50 10 who were suspects in the lineup, did you try to convince him
10:05:53 11 in any way to pick out the other suspect?
10:05:56 12 A. No, I did not.
10:05:57 13 Q. Now, after the lineup, let's now turn to Plaintiff's
10:06:06 14 Exhibit 11. Before we do, let me ask you this question.
10:06:20 15 After the lineup with Sheree and Michael on March 29th of the
10:06:26 16 Vaughn/White case, it's on March 28th, did you, Dave
10:06:30 17 O'Callaghan, have any further role in the Vaughn/White
10:06:32 18 investigation?
10:06:32 19 A. Just executing what's called a consent to search to look
10:06:39 20 for additional weapons that night.
10:06:41 21 Q. When you say that night, do you mean the night of March
10:06:43 22 29th?
10:06:44 23 A. After this lineup, we went out, yes.
10:06:52 24 Q. Okay. Other than that, after that night, March 29th?
10:06:56 25 A. Other than brief where Robertson handed this case to Jack

10:07:03 1 Hines, very briefly, then that would be it.

10:07:05 2 Q. We will get back to that.

10:07:08 3 In between from March 29th until the meeting with
10:07:11 4 Jack Hines, did you have any involvement in the investigation?

10:07:13 5 A. This was not my case, no.

10:07:15 6 Q. Now, let's go to Plaintiff's Exhibit 11, if we could.

10:07:23 7 Can you see it okay?

10:07:30 8 A. I'm sorry.

10:07:32 9 Q. All right. What is this, if you know?

10:07:38 10 A. This is the top of the supplementary report, and I notice
10:07:45 11 the bottom is 31 March. This is a report prepared by
10:07:49 12 detective Robertson, the top tells you you're lining up.

10:07:56 13 Q. So this is the homicide, the Vaughn/White murder that took
10:07:59 14 place on March 28th between 5:00 and 5:21 a.m. and at the
10:08:03 15 bottom some of the detectives who are on there, correct?

10:08:06 16 A. Correct.

10:08:06 17 Q. Is that your signature on this report?

10:08:08 18 A. No, Jon probably signed my name.

10:08:12 19 Q. Okay.

10:08:13 20 MR. LOEVY: Objection to the last part, your Honor.

10:08:15 21 THE COURT: Overruled. The answer can stand.

10:08:21 22 BY MR. KULWIN:

10:08:22 23 Q. All right. Now, if we can turn to page 4 of the report.

10:08:26 24 In the middle, six paragraphs down, page 4. You're
10:08:47 25 on page 3, I believe. Can you go to the next page. No, it is

10:08:52 1 page 4. I apologize.

10:08:56 2 I meant page 3. I apologize, in the middle, page 3.

10:09:06 3 Right here, the middle paragraph where it says felony review.

10:09:11 4 Can you blow that up.

10:09:12 5 BY MR. KULWIN:

10:09:13 6 Q. Now, does it indicate that a state's attorney was called

10:09:19 7 to the lineup on the 29th at that time?

10:09:22 8 A. Yes.

10:09:25 9 Q. And who was the state's attorney who was called?

10:09:27 10 A. On that day, it was assistant state's attorney Cesario.

10:09:32 11 Q. Okay. And what does it indicate assistant state's

10:09:36 12 attorney did?

10:09:36 13 A. He interviewed and logged the two children.

10:09:42 14 Q. So when you say interviewed and logged, he interviewed

10:09:46 15 Sheree and Michael Vaughn and made a report for the state's

10:09:51 16 attorney's office?

10:09:51 17 A. Yes, he would have.

10:09:53 18 Q. Now, on that same page -- actually, on the next page, page

10:10:11 19 4, at the bottom, was felony review from the state's

10:10:21 20 attorney's office contacted after the lineups that Sheree and

10:10:24 21 Michael Vaughn participated in?

10:10:26 22 A. This is referenced in this, but I don't know which date we

10:10:34 23 are talking about here.

10:10:34 24 Q. Okay. Does it indicate that detective -- do you see it?

10:10:38 25 A. Other state's attorneys became involved in this case, yes.

10:10:44 1 Q. Okay. Can you tell us, there's ASA j-a-k-a-l-s-k-i, came
10:10:53 2 and then he went to the super ASA b-a-b-b-i-t, and then what
10:10:59 3 was the report on whether or not the state was going to pursue
10:11:03 4 charges on Pumpkin and Jackson?

10:11:07 5 A. It says rejected charges against Robert Jackson due to
10:11:13 6 uncorroborated identification made by Michael Vaughn.

10:11:16 7 Q. So you have so far in this Vaughn/White report, you have
10:11:19 8 ASA Cesario involved, ASA Babbit and ASA Jack?

10:11:25 9 MR. LOEVY: Objection, asked and answered and
10:11:27 10 relevance.

10:11:27 11 THE COURT: He hasn't asked it yet.

10:11:29 12 BY MR. KULWIN:

10:11:30 13 Q. Does this report indicate at that time that Anthony Sumner
10:11:38 14 is one of the suspects in the Vaughn/White murders? Go to
10:11:42 15 page 1, please. Can you blow it up.

10:12:00 16 A. At that time, he's marked as wanted for questioning.

10:12:06 17 Q. Now, according to the report, I think if you look at page
10:12:24 18 3 again, and if you can go to this next to the bottom
10:12:34 19 paragraph where it says Sheree Vaughn. Does the report
10:12:39 20 indicate whether Sheree Vaughn was shown a photo array of the
10:12:43 21 potential suspects in the Vaughn/White murders that took place
10:12:47 22 on March 28th, 1985, on the day that the state's attorneys
10:12:55 23 were also there? Does it indicate that?

10:12:56 24 A. It indicates that a photo array was completed with Anthony
10:13:02 25 Sumner being in it.

10:13:03 1 Q. Okay. And does it indicate what Vaughn said about that at
10:13:07 2 the time?

10:13:07 3 A. Okay. All right. I got it. He can read the smaller one.

10:13:18 4 Anthony Sumner a/k/a sundown looked like one of the
10:13:25 5 offenders in this case.

10:13:27 6 Q. Now, you were asked a number of questions -- you can take
10:13:30 7 that down, please.

10:13:32 8 BY MR. KULWIN:

10:13:32 9 Q. So just to be clear, on March 29th already Anthony Sumner
10:13:39 10 is a suspect in the Vaughn/White murders and the Cook County
10:13:43 11 state's attorney's office based on this report, if you can
10:13:47 12 tell, is aware of that knowledge, according to this report,
10:13:50 13 the state's attorney, the Cook County state's attorney?

10:13:53 14 A. No, I believe this report indicates on 31 March, not 29th.

10:14:00 15 Q. I'm sorry. March 31. I apologize?

10:14:02 16 A. On 31 March, yes.

10:14:06 17 Q. My mistake, Dave. Thank you for correct can me.

10:14:09 18 A. Happy to.

10:14:10 19 Q. I'm sure you are.

10:14:12 20 Now, you were asked a number of questions by the
10:14:21 21 plaintiff's lawyer about Plaintiff's Exhibit 199. When
10:14:30 22 Clarence Glenn and Robert Jackson were apparently interviewed
10:14:35 23 in this case.

10:14:36 24 First of all, if you look at the bottom, what's the
10:14:39 25 date of the report?

10:14:40 1 A. This is another report submitted on 31 March 1985 and
10:14:47 2 detectives Markham and hood are responsible for this report.
10:14:53 3 Q. There is more investigation going on.
10:15:14 4 Are you on this report?
10:15:16 5 A. I don't believe so.
10:15:17 6 Q. Did you have any involvement in these interviews that are
10:15:20 7 reflected here?
10:15:21 8 A. No.
10:15:22 9 Q. Okay. Let's go to Plaintiff's Exhibit 108. What's the --
10:15:52 10 what's this 108? Why don't you let him look at the whole
10:15:56 11 thing first. Can you take that down for a second? Can you
10:16:00 12 clear it so I can look at the whole thing?
10:16:02 13 A. I got it.
10:16:03 14 Q. You got it.
10:16:04 15 What's this?
10:16:05 16 A. This is another supplementary report the night of the
10:16:10 17 investigation by Robertson and Kobel and it's referencing an
10:16:16 18 interview with a subject I know.
10:16:20 19 Q. Rode11 Banks?
10:16:21 20 A. Rode11 Banks, yes.
10:16:23 21 Q. Are you listed -- what's the date of it? I'm sorry?
10:16:27 22 A. Eighth of April, 1985.
10:16:29 23 Q. Okay. Hold on a second. Are you listed as one of the
10:16:39 24 detectives on that report?
10:16:40 25 A. Not on this page, no.

10:16:42 1 Q. On any of the pages?

10:16:44 2 A. I doubt it.

10:16:45 3 Q. Well, let's turn. Turn to the next page, please. That's
10:16:49 4 the second page. Look at the bottom?

10:16:52 5 A. No, this is Robertson and Kobel.

10:16:55 6 Q. Okay. So that's April. Were you involved in any of the
10:16:59 7 activity that's reflected in the report?

10:17:01 8 A. No.

10:17:01 9 Q. Okay. Let's go to -- by the way, in this report, can you
10:17:23 10 go down to page 2? Can you go down to the third paragraph,
10:17:27 11 this is an interview with Rodell Banks. And if you can
10:17:31 12 highlight according to banks where it says both Sumner and
10:17:35 13 Hawkins. Can you highlight all that, please, all the way down
10:17:38 14 to the bottom, all the way across.

10:17:42 15 It says both Sumner and banks, both Sumner and
10:17:47 16 Hawkins according to banks are no longer El Rukns because of
10:17:49 17 their smoking cocaine, both are considered outsiders, Sumner
10:17:53 18 was separated from the gang for eight months and Hawkins has
10:17:57 19 been separated from the gang for about six months. Do you see
10:18:00 20 that?

10:18:00 21 A. I do.

10:18:00 22 Q. Now, you didn't participate in this interview, right?

10:18:02 23 A. I did not.

10:18:03 24 Q. Okay. If that's accurate, then by the time -- tell me if
10:18:12 25 I've got this right, by 1986 when Mr. Hawkins was going to

10:18:17 1 trial in front of Judge Maloney, he wouldn't -- according to
10:18:20 2 banks anyway, he wouldn't have been in the El Rukns? That's
10:18:24 3 what this seems to imply?
10:18:25 4 A. Yes, or suspended. Yes.
10:18:29 5 Q. Do you know whether in 1986, June and August, Nathson
10:18:33 6 Fields was still in the El Rukns?
10:18:34 7 A. Yes.
10:18:36 8 Q. Now, let's going to Plaintiff's Exhibit 78. Do you see
10:18:49 9 this? Go down to the bottom too as well, please.
10:18:53 10 What's 78?
10:18:58 11 A. What is it?
10:19:05 12 Q. Yeah, what is it?
10:19:05 13 A. Chicago --
10:19:08 14 Q. Hold it. Uncover it, please.
10:19:12 15 A. This is a lineup supplementary prepared reference a lineup
10:19:18 16 that occurred on 25 April 1985 and was conducted by detective
10:19:23 17 Robertson.
10:19:24 18 Q. Okay. Is your name on the -- as one of the detectives?
10:19:29 19 A. I was never ever involved in this lineup, did not know
10:19:33 20 about it until --
10:19:34 21 Q. All right. Just answer the question.
10:19:37 22 A. The answer is, no, I don't believe my name is on this
10:19:39 23 report anywhere.
10:19:40 24 Q. And were you involved in any of the activity reflected on
10:19:43 25 it?

10:19:43 1 A. I was not, definitely not.

10:19:45 2 Q. Okay. What's the date?

10:19:46 3 A. 25 April 1985.

10:19:50 4 Q. Okay. Let's go now to Plaintiff's Exhibit 109. Can I see
10:20:12 5 the whole thing first? The whole thing.

10:20:15 6 Do you recognize this now anyway while it's sitting
10:20:18 7 in front of you?

10:20:19 8 A. Yes.

10:20:19 9 Q. What is this?

10:20:21 10 A. This is another supplementary report that's recording in
10:20:29 11 custody of Robert Lee Jackson and council Glenn and that date
10:20:34 12 is 27 April '85.

10:20:39 13 Q. Okay.

10:20:39 14 A. Okay.

10:20:40 15 Q. Is your name listed -- are you one of the detectives
10:20:49 16 listed as being involved in any activity reflected in this
10:20:53 17 report?

10:20:54 18 A. No, I am not involved.

10:20:55 19 Q. Were you involved in any of the activity?

10:20:58 20 A. At this point, no.

10:20:58 21 Q. Okay. Now, in this report, if you look at page 4 -- page
10:21:45 22 3, I'm sorry. Go to page 3, please. If we go to the
10:21:48 23 paragraph right after investigation, yeah, just do the
10:21:51 24 paragraph after investigation.

10:21:53 25 Does the report indicate that the state's attorney

10:21:56 1 was called to speak with Vaughn, the Vaughn children?

10:22:00 2 A. Yes, it says ASA Luchsinger responded to area one.

10:22:10 3 Q. For the court reporter, I'm going to spell it.

10:22:12 4 L-u-c-h-s-i-n-g-e-r.

10:22:18 5 And if you look on page 4, if you go to the third
10:22:25 6 paragraph, actually, if you go to the top three paragraphs,
10:22:33 7 let's blow the whole three paragraphs up.

10:22:36 8 To confirm, you're not at the area at this time, you
10:22:39 9 are not involved in this, your name is not on the report do I
10:22:42 10 have it right?

10:22:42 11 MR. LOEVY: Objection, asked and answered.

10:22:44 12 THE COURT: Sustained.

10:22:45 13 BY MR. KULWIN:

10:22:46 14 Q. Now, does this indicate that ASA Luchsinger is talking to
10:22:50 15 Ms. Sheree Vaughn about why she now states that Pumpkin,
10:22:55 16 Robert Jackson is one of the offenders and they responded that
10:22:59 17 she was afraid for her safety and that of her brothers so she
10:23:02 18 did not want to identify him.

10:23:04 19 And then it goes on, Luchsinger asked why she was
10:23:07 20 able to make that identification now and she related she wants
10:23:10 21 the offenders punished for what they did to her mother and
10:23:13 22 Joe.

10:23:13 23 Go down if you can at the bottom, we talked about ASA
10:23:18 24 Luchsinger, right here, ASA Luchsinger asked Michael why he
10:23:22 25 did not identify Squeaky in the lineup of the murders. He

10:23:26 1 said he thought he identified Squeaky as well as Pumpkin. ASA
10:23:32 2 Luchsinger reviewed the case, ASA Luchsinger at this time
10:23:37 3 approved an arrest warrant for the charge of murder on both
10:23:40 4 Jackson and Glenn. If you go down to the next page, please in
10:23:46 5 the paragraph on the bottom, does it indicate that ASA
10:23:50 6 Luchsinger then confers with other assistant state's attorney
10:23:58 7 about the case concerning Jackson and Glenn?
10:24:02 8 A. Let me just read.
10:24:03 9 Q. It has to do with the comparison of the palm prints. It
10:24:07 10 says Durnbach?
10:24:09 11 A. Dennis Durnbach.
10:24:10 12 Q. Luchsinger confers with his supervisor Durnbach. Is it
10:24:18 13 fair to say that the state's attorney as you no he are
10:24:20 14 reviewing all the evidence to present to the detectives in
10:24:22 15 deciding whether there's sufficient evidence to bring charges?
10:24:25 16 MR. LOEVY: Objection, leading, your Honor.
10:24:27 17 THE COURT: Sustained.
10:24:29 18 BY MR. KULWIN:
10:24:50 19 Q. Now, this report, 109, indicates that a number of steps, I
10:24:54 20 am not going to go through all of them to save time, but a
10:24:57 21 number of investigative steps continued on after April 27th or
10:25:02 22 during April 27th, but certainly between March 31st and 27th
10:25:07 23 regarding the investigation of the Vaughn/White murders which
10:25:10 24 took place on March 28th, 1985. Were you involved in any of
10:25:16 25 the stuff that's reflected in these reports? Were you the

10:25:18 1 detective involved at all?

10:25:19 2 A. No, I was not.

10:25:21 3 MR. LOEVY: Asked and answered, your Honor.

10:25:22 4 THE COURT: Overruled.

10:25:23 5 BY MR. KULWIN:

10:25:23 6 Q. What was the answer? I'm sorry?

10:25:25 7 THE COURT: He said no.

10:25:26 8 MR. KULWIN: Thank you, Judge.

10:25:29 9 BY MR. KULWIN:

10:25:33 10 Q. Now, to be clear, when did the Smith/Hickman murders take
10:25:46 11 place?

10:25:46 12 A. April 28th, 1984.

10:25:50 13 Q. Okay. So Smith/Hickman is 4/28/84, right?

10:26:17 14 A. 4/28/84, yeah.

10:26:22 15 Q. And Vaughn/White 3/28/85.

10:26:39 16 Okay. Now, when was -- was Nathson Fields in

10:26:52 17 custody, in the Chicago Police Department's custody in March
10:26:55 18 of 1985?

10:26:56 19 A. No, sir.

10:26:57 20 Q. Was he a suspect in the Vaughn/White murders in March of
10:27:01 21 1985?

10:27:02 22 A. No, sir.

10:27:03 23 Q. Did you ever conduct a lineup of any kind with Nathson
10:27:11 24 Fields relating to the Vaughn/White case?

10:27:14 25 A. Never.

10:27:14 1 Q. Are you aware of any report anywhere that indicates that
10:27:24 2 any such lineup with Nathson Fields relating to the
10:27:31 3 Vaughn/White case exists?
10:27:32 4 A. None exists because none occurred.
10:27:34 5 Q. Now, Dave, have you heard Mr. Fields in prior hearings in
10:27:41 6 this case, however, testify that there was such a lineup?
10:27:44 7 A. Yes, I have.
10:27:46 8 Q. Did Mr. Fields indicate that that lineup took place on the
10:27:53 9 day he was arrested?
10:27:54 10 MR. LOEVY: Objection, your Honor.
10:27:56 11 THE COURT: I need to see the lawyers at sidebar,
10:27:58 12 please.
10:27:58 13 MR. KULWIN: Sure.
10:27:59 14 (The following proceedings were had at sidebar outside the
10:28:10 15 hearing of the jury:)
10:28:10 16 THE COURT: I am trying to recall. Did this come up
10:28:13 17 during Mr. Fields' examination?
10:28:13 18 MR. LOEVY: No.
10:28:14 19 THE COURT: You have a 608(b) problem. What's the
10:28:21 20 purpose you are offering this for, Fields made a false
10:28:22 21 statement at an earlier point in time?
10:28:22 22 MR. KULWIN: Different story.
10:28:24 23 THE COURT: You have a problem, 608(b).
10:28:26 24 MR. KULWIN: Thank you, your Honor.
10:28:31 25 (The following proceedings were had in open court in the

10:28:31 1 presence and hearing of the jury:)

10:28:31 2 THE COURT: Okay. Rule 608(b), the objection is
10:28:36 3 sustained. The jury is directed to disregard the testimony
10:28:40 4 about the prior testimony by Mr. Fields.

10:28:42 5 You can proceed.

10:28:45 6 BY MR. KULWIN:

10:28:46 7 Q. Let's go to Plaintiff's Exhibit 72, August 31st, 1985.

10:28:56 8 A. Okay.

10:28:57 9 Q. Got it?

10:28:59 10 A. Front page, yes.

10:29:00 11 Q. All right. Can you go through slowly each page. You know
10:29:05 12 what, I am going to give it to you so you can look at it. A
10:29:08 13 little faster. Stay on page 1, if you could. I am going to
10:29:12 14 give you my copy. Actually, do you have another copy?

10:29:23 15 BY MR. KULWIN:

10:29:27 16 Q. I am handing you what's been marked as Plaintiff's Exhibit
10:29:30 17 72, it's a supplemental report dated August 31st, 1985. What
10:29:41 18 case does this relate to?

10:29:42 19 A. This is Robertson's supp on well, Joseph white but it's
10:29:51 20 also Ms. /AO*ER Vaughn.

10:29:52 21 Q. Were you involved in any way in the Vaughn/White
10:29:54 22 investigation on August 31st, 1985?

10:29:57 23 A. No, this is a compilation of --

10:30:03 24 Q. Hold on a second. I am going to ask you a question.

10:30:05 25 Were you involved?

10:30:06 1 A. No, this was their case.

10:30:09 2 Q. Okay. Hang on.

10:30:11 3 A. The answer is no.

10:30:12 4 Q. Okay. Good.

10:30:13 5 All right. What is the purpose of this report based
10:30:19 6 on your experience as a detective?

10:30:20 7 A. This would be a report that indicates over a period of
10:30:27 8 time that Earl Hawkins and Nathson Fields were actually taken
10:30:31 9 into custody.

10:30:32 10 Q. Okay. Now, if you go to the last page, on the bottom,
10:30:44 11 please, I want to go through some things.

10:30:46 12 On the left, it has names of Sergeant Murphy, you,
10:30:52 13 detective Kobel, detective Robertson. On the right, what are
10:30:56 14 the G S stand for?

10:30:58 15 A. Gang specialist Richardson, gang specialist I'm sorry gang
10:31:04 16 specialist castle and blacked out would be Tommy Richardson,
10:31:09 17 gang specialist Dan Brannigan and gang specialist Richard /KOL
10:31:16 18 /SREUTS, R. Coluzzi.

10:31:20 19 Q. Was it part of the pattern -- was it part of the practice
10:31:24 20 of the area one detectives whenever they did a summary report
10:31:28 21 clearing an investigation after the suspects were arrested to
10:31:30 22 list on the reports every detective who even had any minimal
10:31:36 23 contribution to the case?

10:31:36 24 MR. LOEVY: Objection, leading, your Honor.

10:31:38 25 THE COURT: Overruled. It is leading. Don't do

10:31:40 1 that. You can answer this question, though.

10:31:43 2 THE WITNESS: It was the practice of most of us to
10:31:45 3 give credit to everybody.

10:31:46 4 BY MR. KULWIN:

10:31:50 5 Q. Your name is on the report. Can you go to the front page,
10:31:53 6 please.

10:31:56 7 MR. LOEVY: Asked and answered, your Honor.

10:31:57 8 THE COURT: Overruled.

10:31:58 9 BY MR. KULWIN:

10:31:59 10 Q. Is that your signature at the bottom?

10:32:01 11 A. No.

10:32:02 12 Q. Okay. Now, you were asked a number of questions about a
10:32:08 13 meeting that you had with Jack Hines on June 14th, 1985, after
10:32:13 14 Mr. Fields had been arrested and identified in a lineup and
10:32:19 15 had given you an interview. Do you remember those questions?

10:32:21 16 A. Yes.

10:32:22 17 Q. After -- and you also testified that Mr. Fields met with
10:32:26 18 you and then Mr. Hines.

10:32:27 19 After the interviews with Mr. Fields, did you and
10:32:30 20 detective Robertson meet with Jack Hines in his felony review
10:32:35 21 capacity?

10:32:35 22 A. Yes.

10:32:36 23 Q. Okay. What case were you -- and were you both -- what
10:32:40 24 were you presenting to Mr. Hines at that time?

10:32:42 25 A. I was presenting the Hickman Smith double and Jon would

10:32:48 1 have given him a brief synopsis of the Vaughn/White case which
10:32:54 2 was already a long time.

10:32:56 3 Q. What was the purpose of presenting that information to
10:33:03 4 assistant state's attorney Jack Hines?

10:33:05 5 A. The Cook County state's attorney's office is the only one
10:33:07 6 who has authority to approve murder charges, so that would be
10:33:13 7 the purpose.

10:33:13 8 Q. Now, you were asked a number of questions about whether or
10:33:22 9 not -- whether you briefed the state's attorney about Anthony
10:33:26 10 Sumner's possible involvement in the Vaughn/White case. Do
10:33:29 11 you remember those questions that Mr. Loevy asked you in this
10:33:34 12 case? Do you remember being asked those questions?

10:33:35 13 A. I am not sure, but probably.

10:33:39 14 Q. Okay. Let me ask you this question. At the time that you
10:33:45 15 were meeting with Jack Hines on June 14th, 1985, based on all
10:33:50 16 of your reviews of the Vaughn/White reports, to the best of
10:33:56 17 your knowledge, was the Cook County state's attorney, based on
10:33:59 18 your knowledge aware of the implication of Anthony Sumner in
10:34:03 19 the Vaughn/White case?

10:34:03 20 MR. LOEVY: Objection. Leading, your Honor, and
10:34:05 21 asked and answered.

10:34:06 22 THE COURT: Sustained. Well, not as to leading, but
10:34:10 23 foundation.

10:34:10 24 BY MR. KULWIN:

10:34:12 25 Q. Okay. Did you have knowledge by June 14th, 1985, this is

10:34:20 1 a yes or no answer?

10:34:21 2 A. Okay.

10:34:21 3 Q. Yes or no, did you have knowledge by June 14th, 1985,
10:34:25 4 where the Cook County state's attorney's office knew that
10:34:28 5 Anthony Sumner had been at least implicated possibly in the
10:34:32 6 Vaughn/White case?

10:34:32 7 A. Yes.

10:34:33 8 Q. What was the basis for your knowledge, the basis, don't
10:34:36 9 tell me your knowledge, the basis for it?

10:34:38 10 A. Okay. There was a report.

10:34:40 11 Q. Okay.

10:34:42 12 THE COURT: You can ask the question.

10:34:43 13 MR. KULWIN: Thank you, Judge.

10:34:44 14 BY MR. KULWIN:

10:34:45 15 Q. Based on that, were you aware whether Jack Hines and the
10:34:49 16 Cook County state's attorney's office were already aware that
10:34:51 17 Anthony Sumner had been implicated as a potential suspect in
10:34:54 18 the Vaughn/White case on June 14th, 1985?

10:34:56 19 A. Yes.

10:34:57 20 Q. Okay. What were you aware of?

10:34:58 21 A. I was aware that Jack had went through all the reports and
10:35:04 22 that Anthony Sumner, one of those reports we just went over
10:35:08 23 listed Anthony Sumner as wanted for questioning. The Rodell
10:35:13 24 Banks report I think it was.

10:35:14 25 Q. All right. Now, you were asked a number of questions

10:35:25 1 about how anybody could continue -- could think that Mr.
10:35:32 2 Fields could have possibly been one of the offenders in the
10:35:34 3 Vaughn/White case given the testimony of the children that
10:35:38 4 they had only seen two people committing the crime. Do you
10:35:41 5 remember that, those questions?
10:35:43 6 A. I do. I do.
10:35:44 7 Q. First of all, do you remember the testimony of how the
10:35:47 8 children saw the murder without getting into too much detail?
10:35:51 9 A. Yes.
10:35:52 10 Q. Okay. Can you tell us what that was, what that testimony
10:35:56 11 was?
10:35:56 12 A. The little ones were hiding behind a door and cracked it
10:36:02 13 open and get a view like this.
10:36:04 14 Q. Like four to six inches, I think?
10:36:07 15 A. I believe that's the testimony.
10:36:08 16 Q. Was there any testimony at all that it was impossible that
10:36:14 17 a third person could have been somewhere else in the room or
10:36:17 18 outside or assisting?
10:36:18 19 MR. LOEVY: Objection, your Honor.
10:36:19 20 THE COURT: Overruled.
10:36:21 21 THE WITNESS: No.
10:36:21 22 BY MR. KULWIN:
10:36:23 23 Q. Are you familiar with the concept called felony murder?
10:36:25 24 A. Yes.
10:36:26 25 Q. What's felony murder?

10:36:28 1 MR. LOEVY: Objection to relevance, your Honor.

10:36:29 2 THE COURT: Sustained.

10:36:29 3 BY MR. KULWIN:

10:36:34 4 Q. In June 1985, were you aware that Anthony Sumner had given

10:36:41 5 inaccurate information to the authorities about Mr. Fields'

10:36:44 6 involvement in the Vaughn/White case?

10:36:45 7 A. In 1985?

10:36:47 8 Q. Yes.

10:36:48 9 A. Definitely not.

10:36:49 10 Q. When was the first time that that information came out,

10:36:54 11 years, short?

10:36:56 12 A. In 1991 I believe that's the first -- that Sumner's gave

10:37:03 13 it up, yes.

10:37:04 14 Q. Okay. And prior to that, when was the earliest time or

10:37:10 15 later time that it came up?

10:37:11 16 A. Okay.

10:37:12 17 Q. If you know?

10:37:13 18 A. Yeah, Earl Hawkins was the first.

10:37:16 19 Q. When? When? Not who. When, approximately?

10:37:20 20 A. 1990, 91, right in that pocket.

10:37:24 21 Q. All right. Thank you.

10:37:26 22 You were asked a number of questions about Michael

10:37:33 23 Arbuckle. Do you remember those questions?

10:37:35 24 A. I do.

10:37:35 25 Q. I believe the question was did the confidential informant

10:37:38 1 quote-unquote blow up the theory that Nathson Fields could be
10:37:41 2 involved in the Vaughn/White murders in August 1985? Do you
10:37:44 3 remember those questions?

10:37:45 4 A. I remember them.

10:37:46 5 Q. And you were shown a report indicating that a CI had made
10:37:50 6 some statements. Can we look at Plaintiff's Exhibit 72 at
10:37:53 7 page 4, please. Page 4, please. This part here, confidential
10:38:07 8 informant?

10:38:07 9 BY MR. KULWIN:

10:38:09 10 Q. It talks about a confidential cooperating informant who
10:38:13 11 was interviewed and it goes on in Milwaukee, Wisconsin. Do
10:38:18 12 you remember being asked questions about that?

10:38:20 13 A. I do.

10:38:20 14 Q. Now, if you go down to the bottom of that page, right
10:38:31 15 there, felony review, blow that up, please, does it indicate
10:38:37 16 whether the Cook County state's attorney felony review unit
10:38:40 17 had been advised of that very information about the
10:38:44 18 confidential informant and still approved charges against
10:38:47 19 Nathson Fields for those murders?

10:38:49 20 A. Yes.

10:38:50 21 Q. And the confidential informant's information, if you know,
10:39:00 22 confirms what Sumner had told the Cook County state's
10:39:05 23 attorney's office, that he had been involved in those murders,
10:39:08 24 correct?

10:39:08 25 A. This report indicates -- you're asking me.

10:39:18 1 Q. I'm asking you if the report confirms information -- I'll
10:39:22 2 withdraw it?

10:39:23 3 A. Do you understand what I'm saying?

10:39:24 4 Q. I do understand. I'm withdraw the question.

10:39:27 5 Now, you were asked some questions about whether it
10:39:31 6 wouldn't have been important or right or fair to protect the
10:39:35 7 criminal defendants' rights, in this case, Mr. Fields, to
10:39:38 8 provide the identity of the confidential informant. Do you
10:39:42 9 remember those questions?

10:39:42 10 A. Yes.

10:39:43 11 Q. Sir, to your knowledge, are the police required to turn
10:39:49 12 over the identities of confidential informants?

10:39:52 13 A. They are not.

10:39:55 14 Q. Why not?

10:39:56 15 A. Well, confidential informants are kind of in a protected
10:40:02 16 status. That's it. He's confidential, so there is a system
10:40:07 17 for people to get the identification of that informant.

10:40:11 18 Q. Put another way, they're confidential?

10:40:14 19 MR. LOEVY: Objection. Leading, your Honor.

10:40:15 20 THE COURT: Sustained.

10:40:19 21 THE COURT: There is no way it was --

10:40:22 22 MR. KULWIN: Thanks, Judge. You are ahead of me.

10:40:24 23 BY MR. KULWIN:

10:40:25 24 Q. Let me ask you this question. Is there a way for a
10:40:29 25 criminal defendant, if you know, based on your experience, for

10:40:33 1 a criminal defendant to obtain the identity of a confidential
10:40:37 2 informant if they think it's important to their defense?
10:40:38 3 A. Yes.
10:40:39 4 Q. How do you know? Do you know? So how do you know? Is it
10:40:46 5 based on your experience?
10:40:47 6 A. Yes.
10:40:47 7 Q. What's the way a criminal defendant can get the identity
10:40:51 8 of a confidential informant if they think it's important to
10:40:54 9 their defense?
10:40:55 10 A. The basics are they go to a judge and they asked for an in
10:41:03 11 camera hearing and then the judge would decide whether or not
10:41:07 12 he's going to release the identity of a confidential informant
10:41:12 13 and order such a thing.
10:41:13 14 Q. Now, is there -- based on your review of the -- well, you
10:41:29 15 were asked a whole bunch of questions about whether there were
10:41:31 16 any CPD, CPD, are there any Chicago Police Department reports
10:41:37 17 reflecting the fact that Michael Arbuckle was this
10:41:41 18 confidential informant and was cooperating with the police?
10:41:44 19 Do you remember those questions?
10:41:45 20 A. I do.
10:41:47 21 Q. Okay. First, yes or no?
10:41:51 22 A. Okay.
10:41:51 23 Q. Yes or no, do you know whether there are such reports?
10:41:56 24 A. Do I know? I'm making a supposition. No, I do not know
10:42:03 25 if there's something identifying Michael Arbuckle separate

10:42:08 1 then this inference here.

10:42:09 2 Q. Are you aware --

10:42:13 3 MR. KULWIN: Judge, I am going to lead on this one.

10:42:15 4 THE COURT: Okay.

10:42:15 5 BY MR. KULWIN:

10:42:16 6 Q. Do you know whether Michael Arbuckle was being used as a
10:42:20 7 confidential informant in other investigations relating to El
10:42:24 8 Rukn gang task force?

10:42:25 9 A. That I do know.

10:42:26 10 Q. And do you know whether other reports relating --

10:42:29 11 MR. LOEVY: Objection to relevance, your Honor.

10:42:30 12 THE COURT: Can I see you at sidebar? I need to
10:42:35 13 refresh my memory on something.

10:42:39 14 (The following proceedings were had at sidebar outside the
10:42:42 15 hearing of the jury:)

10:42:42 16 THE COURT: Okay. Again, I confess my memory is not
10:42:47 17 perfect. I believe I excluded this during.

10:42:49 18 MR. KULWIN: I couldn't remember.

10:42:50 19 THE COURT: At some earlier point.

10:42:53 20 MR. LOEVY: You made the point you needed to make.

10:42:54 21 THE COURT: I am going to sustain the objection.

10:42:56 22 MR. KULWIN: Okay, Judge.

10:43:00 23 (The following proceedings were had in open court in the
10:43:00 24 presence and hearing of the jury:)

10:43:00 25 THE COURT: Hang on one second. I just need to look

10:43:04 1 back here. So the questions and answers about other
10:43:10 2 investigations are excluded. The jury is directed to
10:43:13 3 disregard them.
10:43:14 4 BY MR. KULWIN:
10:43:16 5 Q. Now, Dave, there were some questions about cases or things
10:43:28 6 involving street files. Do you remember those questions that
10:43:31 7 you were asked?
10:43:31 8 A. Yes.
10:43:32 9 Q. Okay. With respect to in any files of other cases that
10:43:41 10 have nothing to do with Mr. Fields, were you involved in the
10:43:44 11 maintenance or disposition of any of those files? Is that
10:43:49 12 part of your job?
10:43:49 13 A. No, that's a records keeping, people in the office.
10:43:55 14 That's not me.
10:43:56 15 Q. Were you involved in providing information to the Cook
10:43:59 16 County state's attorney's office or criminal defendants and
10:44:02 17 all those other cases, hundreds of cases, were you involved in
10:44:05 18 any of that?
10:44:06 19 A. No, that's an administrative duties, not mine.
10:44:10 20 Q. Okay. Showing you Plaintiff's Exhibit 1, this is
10:44:29 21 Plaintiff's Exhibit 1 which I believe they referred to as the
10:44:32 22 street file. I am going to hand it over to you.
10:44:35 23 As part of the proceedings in this case, in this
10:44:39 24 case, you've seen this file before?
10:44:42 25 A. I saw this file when Mr. Noland presented it to me back in

10:44:50 1 2010 or 11.

10:44:51 2 Q. Okay. Was that the first time you saw the file?

10:44:54 3 A. It was. I never knew of its existence before.

10:44:57 4 Q. Okay. Can I have it back, please.

10:44:59 5 Could I have that too?

10:45:04 6 A. You sure can.

10:45:05 7 Q. Thanks.

10:45:06 8 Did you take any action whatsoever to prevent the
10:45:16 9 disclosure of any information that's in that file from getting
10:45:22 10 disclosed to Mr. Fields during his criminal prosecution in
10:45:25 11 1986 or thereafter?

10:45:26 12 A. No.

10:45:26 13 Q. Who was responsible for producing any and all information
10:45:31 14 generated by detectives in a police investigation to the Cook
10:45:36 15 County state's attorney's office? Who was responsible?

10:45:38 16 MR. LOEVY: Asked and answered, your Honor, several
10:45:40 17 times.

10:45:40 18 THE COURT: Sustained.

10:45:42 19 BY MR. KULWIN:

10:45:45 20 Q. You were asked some questions, I believe, about a lawsuit
10:45:49 21 that was filed by I believe Mr. Fields relating to that file,
10:45:54 22 I believe in the 1990s sometime. Do you remember those
10:45:56 23 questions?

10:45:57 24 A. I believe it was 1989, yes.

10:45:59 25 Q. Okay. Were you served with that lawsuit?

10:46:01 1 A. I was.

10:46:03 2 Q. What did you do when you were served with the lawsuit?

10:46:06 3 What did you do go ahead. What did you do?

10:46:10 4 A. What did I do?

10:46:11 5 Q. What did you do?

10:46:12 6 A. I'm required to submit a response that I received such a
10:46:15 7 subpoena.

10:46:16 8 Q. I'm sorry?

10:46:17 9 A. I'm required to submit to the department that I've been
10:46:22 10 handed notice of that lawsuit.

10:46:26 11 Q. Okay. So whenever a policeman is sued or gets an official
10:46:32 12 notification of legal notice, they are not allowed to handle
10:46:35 13 it on their own?

10:46:36 14 MR. LOEVY: Objection, your Honor.

10:46:37 15 THE COURT: Overruled.

10:46:37 16 BY MR. KULWIN:

10:46:37 17 Q. Is that right?

10:46:38 18 A. It would be totally improper, you are right.

10:46:41 19 Q. And did you -- and so I'm sorry, you answered that
10:46:44 20 question.

10:46:45 21 Okay. Are you allowed to investigate the allegations
10:46:48 22 of it on your own?

10:46:49 23 A. No.

10:46:50 24 Q. Who does?

10:46:52 25 A. We have internal affairs or the office of professional

10:46:59 1 standards, they investigate the police. I can't investigate
10:47:05 2 myself.

10:47:05 3 Q. Okay. Just a few more, Dave.

10:47:08 4 A. Okay.

10:47:08 5 Q. Dave, there have been allegations in this case against you
10:47:42 6 that you took actions in 1985 solely to make a case against
10:47:47 7 Nathson Fields when you should have known he was innocent.

10:47:49 8 Did you do that?

10:47:50 9 A. No, I did not.

10:47:51 10 Q. There were allegations that you recommended to the Cook
10:47:58 11 County state's attorney's office that Nathson Fields be
10:48:00 12 prosecuted for a murder you knew he couldn't commit based on
10:48:02 13 the evidence. Did you do that?

10:48:03 14 A. The opposite. I recommended charges of what I believe he
10:48:11 15 committed.

10:48:11 16 Q. There were all sorts of allegations that you purposely
10:48:18 17 suggested to witnesses who they should identify in lineups and
10:48:23 18 in photo arrays. Did you ever do that?

10:48:25 19 A. No, sir.

10:48:26 20 Q. Did you coerce any witness in this case?

10:48:34 21 A. It's not my style, no.

10:48:36 22 MR. LOEVY: Objection. Opens the door, your Honor.

10:48:38 23 THE COURT: The answer is stricken. The question was
10:48:41 24 did you coerce any witnesses in this case.

10:48:44 25 MR. KULWIN: I apologize, Judge.

10:48:47 1 THE COURT: You can answer the question.

10:48:49 2 THE WITNESS: My answer is no and I understand.

10:48:51 3 BY MR. KULWIN:

10:48:59 4 Q. Without getting into details, between 1986 and 2009, did
10:49:04 5 you learn other information -- let me -- you were asked if you
10:49:08 6 had any remorse about anything you did in this investigation.
10:49:11 7 Between 1986 and 2009, did you learn additional information
10:49:15 8 that?

10:49:16 9 MR. LOEVY: Objection, your Honor. That's been
10:49:17 10 covered either yesterday or the day before.

10:49:19 11 THE COURT: Let me hear the question.

10:49:20 12 BY MR. KULWIN:

10:49:21 13 Q. Did you learn any additional information between 1986 and
10:49:25 14 2009 that kept you from having any remorse about the steps you
10:49:29 15 took to recommend prosecution of Nathson Fields?

10:49:30 16 MR. LOEVY: Objection, your Honor, that subject was
10:49:33 17 covered.

10:49:33 18 THE COURT: Overruled. You can answer.

10:49:34 19 THE WITNESS: Yes.

10:49:36 20 BY MR. KULWIN:

10:49:37 21 Q. What?

10:49:38 22 MR. LOEVY: Objection, your Honor. Asked and
10:49:39 23 answered.

10:49:40 24 MR. KULWIN: Yeah, I don't think he understood the
10:49:41 25 question.

10:49:41 1 THE COURT: Well, it was an extremely convoluted
10:49:45 2 question.
10:49:45 3 MR. LOEVY:
10:49:46 4 MR. KULWIN: It was a rotten question. Let me ask
10:49:48 5 it. I am going to ask it in a different way.
10:49:51 6 BY MR. KULWIN:
10:49:52 7 Q. It's a yes or no. You were asked some questions whether
10:49:56 8 you had any remorse about the steps you took in 1986 based on
10:50:01 9 your investigation, based on what you knew in June 1985 about
10:50:06 10 recommending to the Cook County state's attorney's office that
10:50:07 11 charges be brought against Nathson Fields. Do you remember
10:50:10 12 being asked that question?
10:50:10 13 A. I do.
10:50:11 14 Q. Did you learn information, without getting into the
10:50:15 15 details between 1986 and 2009 that gave you confidence that
10:50:19 16 you had done the right thing in 1986?
10:50:21 17 A. Yes.
10:50:21 18 Q. Did you ever pursue any charges of any kind against
10:50:33 19 Nathson Fields solely out of malice or ill will towards
10:50:37 20 Nathson Fields?
10:50:37 21 A. I did not.
10:50:39 22 Q. You were asked a number of questions about whether you
10:50:56 23 were aware that Nathson Fields had repeatedly denied his
10:50:59 24 involvement in these murders. Do you remember those
10:51:01 25 questions?

10:51:01 1 A. I do.

10:51:02 2 Q. Did Earl Hawkins repeatedly deny his involvement in these
10:51:06 3 murders for several years before he finally confessed?

10:51:09 4 MR. LOEVY: Objection, your Honor. He was a criminal
10:51:12 5 defendant. He wasn't saying anything.

10:51:14 6 MR. KULWIN: He asked, Judge.

10:51:16 7 MR. LOEVY: He wasn't making statements.

10:51:17 8 THE COURT: Hang on. The objection is sustained.

10:51:17 9 BY MR. KULWIN:

10:51:22 10 Q. Is it common in your experience?

10:51:23 11 MR. LOEVY: Objection, your Honor. He opened the
10:51:26 12 door.

10:51:27 13 THE COURT: Let me hear the question.

10:51:28 14 BY MR. KULWIN:

10:51:28 15 Q. Is it common in your experience, detective, that many
10:51:30 16 individuals deny their involvement in a crime? Is that
10:51:40 17 self-evident?

10:51:40 18 THE COURT: That's kind of a truism.

10:51:42 19 MR. KULWIN: Is that self-evident?

10:51:44 20 THE WITNESS: I may answer? Yes.

10:51:46 21 BY MR. KULWIN:

10:51:50 22 Q. Does that give you any information one way or the other
10:51:52 23 about whether they're guilty or not?

10:51:53 24 THE COURT: The fact that somebody denied something.

10:51:58 25 BY MR. KULWIN:

10:51:58 1 Q. They denied it and they still deny it, they must be not
10:52:03 2 guilty. Does that give you any indication at all as a
10:52:05 3 detective in the Chicago Police Department?

10:52:06 4 A. It does not.

10:52:09 5 MR. KULWIN: If I may have a moment, your Honor.

10:52:11 6 THE COURT: Yes.

10:52:12 7 MR. KULWIN: Your Honor, at this time, I have no
10:52:14 8 further questions.

10:52:14 9 THE COURT: Mr. Noland, Mr. Burns, any questions?

10:52:16 10 MR. NOLAND: No questions, your Honor.

10:52:17 11 THE COURT: Mr. Loevy.

10:52:19 12 - - -

10:52:19 13 DAVID O'CALLAGHAN, REDIRECT EXAMINATION

10:52:19 14 BY MR. LOEVY:

10:52:19 15 Q. Sometimes people deny being involved in crimes and that's
10:52:22 16 why detectives investigate, correct?

10:52:24 17 A. It's one of the reasons, yes.

10:52:27 18 Q. All right. And you're saying when you got the assignment
10:52:29 19 and the tip from Murphy about who they thought did it, you are
10:52:32 20 saying with a hundred percent certainty that you did not go
10:52:36 21 back and pull the investigative file from the sergeant's
10:52:39 22 office, yes or no?

10:52:41 23 A. Okay. The file that.

10:52:43 24 Q. Yes or no?

10:52:43 25 A. Yes, yes, that file you are holding up.

10:52:45 1 Q. I thought you just said that you never -- when Mr. Kulwin
10:52:49 2 was asking you, not two minutes ago, that you knew never of
10:52:52 3 this file's existence, did I misunderstood you?

10:52:55 4 MR. KULWIN: Objection as to which file.

10:52:57 5 THE COURT: We are talking about Exhibit 1?

10:52:59 6 MR. LOEVY: We are talking about Exhibit 1. This is
10:53:01 7 the original. He held up .copies, the street files.

10:53:04 8 THE WITNESS: The notes.

10:53:05 9 BY MR. KULWIN:

10:53:05 10 Q. The file?

10:53:05 11 A. That he gave me, absolutely, I did not know of them until
10:53:10 12 Mr. Noland brought them to my attention.

10:53:12 13 Q. All right. Then you can say with a hundred percent
10:53:14 14 certainty that when Sergeant Murphy told you to reopen the
10:53:17 15 investigation, you did not go to the sergeant's office and
10:53:20 16 read about the Edwards brothers, the Baldwin brothers and all
10:53:23 17 the leads, right?

10:53:24 18 MR. KULWIN: I am going to object, Judge, because
10:53:26 19 those leads are in the police reports.

10:53:28 20 MR. LOEVY: Objection, your Honor.

10:53:28 21 THE COURT: Rephrase the question.

10:53:29 22 BY MR. LOEVY:

10:53:30 23 Q. Tell the jury yes or no when you got the assignment to
10:53:32 24 investigate this murder whether you pulled open the sergeant's
10:53:35 25 file cabinet and read what all the detectives had done before

10:53:38 1 you got involved?

10:53:39 2 MR. KULWIN: Objection, asked and answered, and
10:53:40 3 assumes a fact not in evidence.

10:53:42 4 THE COURT: Overruled.

10:53:43 5 MR. KULWIN: Something's file.

10:53:44 6 THE COURT: Overruled. You can answer.

10:53:46 7 THE WITNESS: Okay.

10:53:48 8 THE COURT: I think if I might, is the question that
10:53:51 9 after he was asked to reopen the investigation, did he go look
10:53:56 10 at that file?

10:53:57 11 MR. LOEVY: Yes, that's the question.

10:53:58 12 THE COURT: Then that's the simple way of asking it.
10:54:00 13 That's the question.

10:54:02 14 THE WITNESS: No, I didn't have that file.

10:54:03 15 BY MR. LOEVY:

10:54:05 16 Q. If your task was to conduct a legitimate investigation,
10:54:09 17 what sense did it make not to -- well, let me back up.

10:54:12 18 You were not involved in the original investigation,
10:54:14 19 right?

10:54:15 20 THE COURT: Of?

10:54:16 21 BY MR. LOEVY:

10:54:16 22 Q. Of Smith/Hickman, you had nothing to do with
10:54:18 23 Smith/Hickman, right?

10:54:18 24 A. No -- you're correct. No, I did not.

10:54:22 25 Q. So when Sergeant Murphy gave you the assignment, he didn't

10:54:25 1 know anything about it, right?

10:54:27 2 A. Correct.

10:54:27 3 Q. All right. And then what sense does it make if you're
10:54:30 4 actually legitimately investigating not to go into the
10:54:33 5 sergeant's office and pull all of the notes and read about the
10:54:36 6 crime?

10:54:36 7 A. So you're asking me -- here, I had enough files and notes
10:54:41 8 and reports to investigate that crime.

10:54:44 9 Q. You had your four suspects and that was enough, wasn't it?

10:54:47 10 MR. KULWIN: Objection, argumentative, Judge.

10:54:48 11 THE COURT: Sustained.

10:54:49 12 MR. KULWIN: And asked and answered.

10:54:50 13 BY MR. LOEVY:

10:54:51 14 Q. All right. You said when the complaint came up years
10:54:53 15 later that you had -- you were -- that information was
10:54:57 16 withheld. You did understand the complaint was that the
10:54:59 17 Chicago Police Department was withholding a street file,
10:55:01 18 correct?

10:55:02 19 MR. KULWIN: Judge, I am going to object. It was
10:55:03 20 asked and answered. Beyond the cross.

10:55:05 21 MR. LOEVY: Your Honor.

10:55:05 22 THE COURT: Hang on a second. I'll allow this as a
10:55:08 23 preliminary to the follow-up question.

10:55:09 24 BY MR. LOEVY:

10:55:10 25 Q. You did understand that the allegation Mr. Fields was

10:55:13 1 making was that he had only gotten eight pages of notes and he
10:55:17 2 wanted the rest of the file, right?

10:55:18 3 A. I understand he made a complaint that I withheld
10:55:22 4 exculpatory information, yes.

10:55:23 5 Q. Did you understand what I just said back when you were
10:55:25 6 accused in the early '80s?

10:55:27 7 A. Say it again and I'll probably agree with you.

10:55:30 8 Q. Did you understand that the nature of Mr. Fields'
10:55:33 9 complaint was I only got eight benign pages of notes and
10:55:36 10 there's got to be more, there's got to be a street file, did
10:55:39 11 you have that subjective understanding when you were sued?

10:55:41 12 MR. KULWIN: Judge, I'll object. Lack of foundation.
10:55:44 13 He looked through the entire lawsuit and that's what the
10:55:46 14 lawsuit says.

10:55:46 15 MR. LOEVY: That's why I asked the question.

10:55:47 16 THE COURT: The objection is overruled. You said
10:55:51 17 early '80s, I think late 80 he is.

10:55:53 18 BY MR. LOEVY:

10:55:54 19 Q. Do you understand the question?

10:55:55 20 A. Can I answer what my understanding was, yes.

10:55:57 21 Q. How about my question, yes or no, did you understand that
10:56:00 22 what Mr. Fields was saying in his lawsuit was I've read about
10:56:04 23 street files, I didn't get the street file, I want the street
10:56:07 24 file. Did you have that understanding, yes or no?

10:56:08 25 A. My understanding is yes and no.

10:56:11 1 Q. All right. And you're saying the rules of the Chicago
10:56:15 2 Police Department, as you understood them, prohibited you from
10:56:18 3 doing any investigation into whether or not a street file had
10:56:21 4 been withheld?

10:56:22 5 A. Prohibited me from investigating myself, when that
10:56:29 6 complaint came in, I'm out.

10:56:31 7 Q. Well, you did sign a piece of paper, you typed up a memo
10:56:34 8 saying I'm not aware of any exculpatory information being
10:56:38 9 withheld and you signed your name to it, right?

10:56:40 10 MR. KULWIN: Judge, I am going to object,
10:56:42 11 argumentative and misleading.

10:56:43 12 MR. LOEVY: No.

10:56:44 13 THE COURT: It was covered in direct. I am
10:56:46 14 sustaining the objection.

10:56:47 15 BY MR. LOEVY:

10:56:47 16 Q. All right. When you said you weren't allowed to do an
10:56:49 17 investigation because you were out, you nonetheless
10:56:53 18 independently had to write a memo describing your activities,
10:56:57 19 right, that was your role of it?

10:57:00 20 THE COURT: In other words, when you got the lawsuit.

10:57:02 21 BY MR. LOEVY:

10:57:03 22 Q. Yeah, you weren't the investigator, but you did have a
10:57:05 23 role, right, in the lawsuit?

10:57:06 24 A. I had a role as far as accepting the lawsuit and making a
10:57:12 25 short denial that I withheld any exculpatory information .

10:57:18 1 After that.

10:57:19 2 Q. Are you saying the rules prohibited you from investigating

10:57:24 3 before you signed that denial?

10:57:24 4 A. Oh, yes. Once I got that lawsuit.

10:57:29 5 Q. Okay. How did you --

10:57:31 6 A. The answer is yes.

10:57:32 7 Q. Then how did you?

10:57:33 8 A. With exclamation, yes.

10:57:35 9 Q. How did you sign your name to a denial that information

10:57:38 10 had been withheld if you didn't do the investigation and you

10:57:41 11 didn't know?

10:57:41 12 A. I don't know how many ways to go around this. Look,

10:57:47 13 there's procedures. If I was to do what you're suggesting, I

10:57:50 14 would have been suspended big time for interfering in an

10:57:55 15 internal investigation that's basically naming me as part of

10:57:59 16 that investigation.

10:57:59 17 Q. All right.

10:58:01 18 A. Is that clear enough?

10:58:02 19 Q. Let's talk about the Vaughn/White investigation that came

10:58:04 20 up this morning.

10:58:05 21 A. All right.

10:58:05 22 Q. If I understand what you told Mr. Kulwin, before Sumner's

10:58:09 23 confession came in, the detectives that worked on the case got

10:58:12 24 the wrong two guys, right?

10:58:14 25 MR. KULWIN: Objection, Judge. Right as his

10:58:18 1 confession came in and what time, foundation.

10:58:20 2 THE COURT: Overruled.

10:58:21 3 BY MR. LOEVY:

10:58:21 4 Q. Before Sumner's confession came in, you and the other
10:58:26 5 detectives got the wrong two guys, correct?

10:58:28 6 A. I partook -- I didn't get those guys. Here, if you're
10:58:34 7 laying it on me, detective brought them in, I partook in
10:58:39 8 lineups.

10:58:39 9 Q. You collectively, the detectives had the wrong two guys,
10:58:42 10 right?

10:58:42 11 MR. KULWIN: Judge, I am going to object to
10:58:44 12 collective.

10:58:44 13 THE COURT: Rephrase.

10:58:45 14 BY MR. LOEVY:

10:58:46 15 Q. You personally participated in a lineup where at least one
10:58:48 16 of the wrong men was identified, that is true, yes or no, sir?

10:58:51 17 MR. KULWIN: Argumentative and misleading.

10:58:53 18 THE COURT: Overruled.

10:58:55 19 THE WITNESS: Yes, the wrong man was identified in
10:58:57 20 that.

10:58:57 21 BY MR. LOEVY:

10:58:57 22 Q. And you were there, you were part of it, right?

10:58:59 23 A. The first lineup, yes.

10:59:02 24 Q. All right. Then I return to the question, before Anthony
10:59:05 25 Sumner's tip came in, you and the other detectives

10:59:07 1 collectively got the wrong two guys, can we agree on that?

10:59:10 2 MR. KULWIN: Object to the collectively, Judge, and

10:59:12 3 the other detectives.

10:59:15 4 THE COURT: Overruled.

10:59:15 5 THE WITNESS: The wrong two guys were arrested and

10:59:18 6 then released, yes.

10:59:19 7 BY MR. LOEVY:

10:59:19 8 Q. All right. That was my next question. After Sumner's tip

10:59:22 9 came in, those two guys got let go, correct?

10:59:25 10 A. I don't know because I didn't -- I wasn't involved. I

10:59:30 11 don't know how the decision was made, so I wasn't part of

10:59:33 12 that.

10:59:33 13 Q. And then the detectives got the wrong going to again,

10:59:36 14 correct?

10:59:36 15 A. Are we speaking on this?

10:59:42 16 Q. Yeah, in Vaughn/White, after you let the other two guys

10:59:45 17 go, then you got Mr. Fields, the wrong guy?

10:59:48 18 MR. KULWIN: Objection.

10:59:48 19 BY MR. LOEVY:

10:59:49 20 Q. Correct?

10:59:49 21 MR. KULWIN: Asked and answered.

10:59:50 22 THE COURT: Sustained. It's argumentative. Save it

10:59:56 23 for argument.

10:59:56 24 BY MR. LOEVY:

10:59:57 25 Q. Nate was innocent?

10:59:58 1 MR. KULWIN: Objection, argumentative.

10:59:59 2 THE COURT: Same.

10:59:59 3 BY MR. LOEVY:

11:00:01 4 Q. This business about the door cracked four to six
11:00:03 5 information. Do you remember those questions from Mr. Kulwin?

11:00:05 6 A. I do.

11:00:06 7 Q. Okay. There was never any question in the original
11:00:09 8 investigation that the people had seen two and only two,
11:00:14 9 correct?

11:00:15 10 MR. KULWIN: Objection, lack of foundation of his
11:00:18 11 knowledge.

11:00:18 12 THE COURT: Overruled. The reports just like you
11:00:21 13 covered on your examination.

11:00:22 14 BY MR. LOEVY:

11:00:22 15 Q. That's true, isn't it, sir?

11:00:24 16 A. The initial report they named two offenders.

11:00:26 17 Q. And every report thereafter named two offenders, correct?

11:00:28 18 A. I believe you're correct.

11:00:30 19 Q. Because the two kids said we saw two men tie up our
11:00:34 20 parents, we saw one of them stab them, we saw one of them
11:00:39 21 shooting them, always two men, right?

11:00:41 22 MR. KULWIN: Objection, argumentative, asked and
11:00:42 23 answered.

11:00:42 24 THE COURT: It was covered sufficiently on direct.

11:00:44 25 BY MR. LOEVY:

11:00:50 1 Q. All right. The state's attorney would not approve the
11:00:54 2 charges based on the uncorroborated identifications you told
11:00:57 3 Mr. Kulwin, correct?

11:00:59 4 A. Yes.

11:01:00 5 Q. Okay. Why are uncorroborated -- if the girl or the boy
11:01:05 6 said that's the guy who he did it, why is that not enough, to
11:01:09 7 your understanding? Is an eyewitness identification enough to
11:01:12 8 make a murder charge?

11:01:14 9 MR. KULWIN: Objection as to how many, Judge.

11:01:16 10 THE COURT: Overruled.

11:01:18 11 THE WITNESS: I can answer it?

11:01:21 12 THE COURT: Yes.

11:01:22 13 THE WITNESS: Okay.

11:01:23 14 THE COURT: The question is is an eyewitness
11:01:27 15 identification enough to make a murder charge?

11:01:29 16 THE WITNESS: In some instances, but that's not my
11:01:32 17 decision again. They make the decision.

11:01:35 18 BY MR. LOEVY:

11:01:35 19 Q. In any event, the detectives, it wasn't you, but the other
11:01:38 20 detectives on the investigation went back and got
11:01:41 21 identifications from both kids?

11:01:43 22 MR. KULWIN: Objection as to relevancy since it
11:01:46 23 wasn't him.

11:01:47 24 THE COURT: Overruled. It was all covered this
11:01:49 25 morning.

11:01:52 1 BY MR. LOEVY:

11:01:53 2 Q. They did. They went back and got better IDs after it got
11:01:59 3 rejected?

11:01:59 4 A. They did.

11:02:00 5 Q. Now, you told Mr. Kulwin a little bit ago if I heard you
11:02:02 6 correctly that before Sumner confessed that Mr. Fields was not
11:02:06 7 involved, Hawkins confessed a year earlier, did you just say
11:02:12 8 that to Mr. Kulwin?

11:02:13 9 A. I said I believe that Hawkins was the first to bring that
11:02:16 10 up. As I sit here today, I believe Hawkins was number one,
11:02:20 11 and then Sumner is number two.

11:02:22 12 Q. And you told Mr. Kulwin you believed it was 1990 that
11:02:25 13 Hawkins was number one, right?

11:02:27 14 MR. NOLAND: Objection, mischaracterized the
11:02:29 15 testimony.

11:02:29 16 THE COURT: Then he'll remember that it's wrong. He
11:02:31 17 asked him if that's correct.

11:02:32 18 BY MR. LOEVY:

11:02:33 19 Q. That's what you told him 1990, right?

11:02:35 20 A. I believe my answer was somewhere 89, 90, and then I am
11:02:40 21 guessing to the exact date. I don't know the exact date.

11:02:42 22 Q. Because the reason you're guessing on the exact date is
11:02:45 23 because you never created a police report that sawed Hawkins
11:02:47 24 admitted Fields was involved, did you?

11:02:49 25 MR. KULWIN: Judge, asked and answered, I ask to be

11:02:52 1 heard.

11:02:52 2 THE COURT: The objection is sustained. It was
11:02:54 3 covered on direct examination.

11:02:55 4 BY MR. LOEVY:

11:02:55 5 Q. But under what circumstances did Earl Hawkins tell you in
11:02:58 6 either 89 or 90 that Nate was not involved in Vaughn/White a
11:03:03 7 year before Sumner disclosed it?

11:03:05 8 MR. KULWIN: Judge, I am going to object.

11:03:07 9 THE COURT: The objection is sustained. It assumes
11:03:09 10 facts not in evidence.

11:03:09 11 BY MR. LOEVY:

11:03:10 12 Q. Did Hawkins tell you in '89, 90, that Fields was innocent?

11:03:14 13 THE COURT: May I see the lawyers at sidebar, please?
11:03:19 14 (The following proceedings were had at sidebar outside the
11:03:21 15 hearing of the jury:)

11:03:21 16 MR. LOEVY: Your Honor, this is new. This is brand
11:03:24 17 new. This is the first I have ever heard.

11:03:26 18 THE COURT: I haven't talked to you yet. Can you
11:03:28 19 articulate your objection?

11:03:30 20 MR. KULWIN: My objection is that O'Callaghan.

11:03:32 21 THE COURT: Talk louder.

11:03:33 22 MR. KULWIN: I think he is concerned that this
11:03:35 23 involved the OCDETF thing and when that investigation came
11:03:38 24 out.

11:03:38 25 THE COURT: Bull in the China shop, Mr. Loevy.

11:03:41 1 You're yanking the door, you're pulling it off the hinges,
11:03:46 2 you're throwing it down the stairs, you're putting lighter
11:03:51 3 fluid on it, you're then lighting the lighter fluid, then
11:03:54 4 you're crushing the ashes and saying the door is gone. I
11:03:58 5 understand that it may be something different. You do not
11:04:01 6 want to open this door. I am sustaining the objection.
11:04:05 7 (The following proceedings were had in open court in the
11:04:06 8 presence and hearing of the jury:)
11:04:06 9 THE COURT: You can proceed.
11:04:07 10 BY MR. LOEVY:
11:04:09 11 Q. After Hawkins admitted that Fields was involved, Sumner
11:04:14 12 admitted the same thing in 1991 you're saying?
11:04:17 13 A. I believe around those dates, sometime around those dates.
11:04:21 14 Q. And that's when you learned that Sumner had a grudge
11:04:23 15 against Nate Fields because he was his landlord and he had
11:04:26 16 kicked him out, right?
11:04:27 17 MR. KULWIN: Objection, asked and answered.
11:04:28 18 THE COURT: Sustained.
11:04:29 19 BY MR. LOEVY:
11:04:30 20 Q. When you learned that Sumner had a grudge against Mr.
11:04:33 21 Fields, did you consider that vis-à-vis the semiautomatic
11:04:40 22 where Sumner was also the source?
11:04:43 23 A. Then, no.
11:04:44 24 Q. Let's talk about Randy Langston.
11:04:45 25

11:04:47 1 MR. KULWIN: Judge -- I'll wait.

11:04:49 2 THE COURT: Wait for the question.

11:04:51 3 BY MR. LOEVY:

11:04:52 4 Q. Yesterday, Mr. Kulwin went through a report with you where

11:04:56 5 Randy Langston observed one man. Do you remember those

11:04:58 6 questions from Mr. Kulwin?

11:04:59 7 A. From both of you, I believe.

11:05:05 8 Q. In 1984, sir?

11:05:07 9 MR. LOEVY: May I have the ELM0, please, your Honor?

11:05:10 10 THE COURT: Yes. There you go. What's the exhibit?

11:05:13 11 MR. LOEVY: It is 8614.

11:05:14 12 BY MR. LOEVY:

11:05:16 13 Q. This is the original report from the day or so after the

11:05:19 14 murder, right?

11:05:19 15 A. Why he.

11:05:22 16 Q. Randy Langston observed a man with a red mask, correct?

11:05:27 17 A. I see that.

11:05:28 18 Q. Okay. Now, here's my question. When you knocked on

11:05:31 19 Randy's door a year later, did you know that Randy had only

11:05:35 20 seen one shooter?

11:05:35 21 A. That report was in my hands, so, yes.

11:05:41 22 Q. All right. If Randy had told the detectives a year

11:05:44 23 earlier that he had only seen one shooter, how was he able to

11:05:48 24 identify two shooters?

11:05:50 25 A. This would require people say they didn't see any shooters

11:05:57 1 and a year later they say I saw the whole thing.

11:05:59 2 Q. That happened to you all the time, huh?

11:06:02 3 A. That's what they would call it, cold case, yes, people who
11:06:08 4 are reluctant come forward later.

11:06:10 5 Q. Randy wasn't reluctant, was he, he gave his name, he gave
11:06:13 6 his address, he said I saw a shooter, he cooperated in '84, he
11:06:18 7 just only saw one shooter?

11:06:19 8 MR. KULWIN: Objection, that was ten questions.

11:06:21 9 BY MR. LOEVY:

11:06:22 10 Q. He wasn't answering, so I kept talking, my fault?

11:06:24 11 MR. KULWIN: Objection.

11:06:27 12 THE COURT: I object to everybody objecting to
11:06:29 13 everybody else's objections objecting back and forth
11:06:32 14 personally, but, you know. So why don't we ask a question.

11:06:35 15 BY MR. LOEVY:

11:06:36 16 Q. When Randy Langston told you that there wasn't one
11:06:40 17 shooter, there was two shooters, did you conclude that he was
11:06:42 18 lying in '84 or that he was mistaken in '84, which one?

11:06:47 19 MR. KULWIN: Objection, Judge. It's argumentative
11:06:50 20 question.

11:06:50 21 THE COURT: Overruled. You can answer that question.

11:06:55 22 THE WITNESS: I would have concluded that he was
11:06:59 23 reluctant in '84, so I wouldn't call him a liar. I mean,
11:07:04 24 that's a harsh word.

11:07:05 25 BY MR. LOEVY:

11:07:06 1 Q. So he was only willing to cooperate with the police with
11:07:09 2 one of the two shooters, I'll tell them about one but I won't
11:07:13 3 tell them with the other?

11:07:15 4 MR. KULWIN: Objection.

11:07:15 5 THE COURT: The objection is sustained. It's
11:07:17 6 argumentative.

11:07:17 7 BY MR. LOEVY:

11:07:19 8 Q. Did you consider when you're looking at probable cause and
11:07:21 9 you're looking at the value of Randy Langston's
11:07:24 10 identification, did you consider that maybe he didn't get that
11:07:27 11 good a view if he only saw one shooter?

11:07:29 12 A. My opinion he got a great view from the shooters.

11:07:34 13 Q. Tell us how the conversation went between you and Randy
11:07:38 14 where he went from one shooter to two shooters?

11:07:40 15 THE COURT: What conversation are we talking about?

11:07:40 16 BY MR. LOEVY:

11:07:42 17 A. The very first conversation where he's going from one
11:07:44 18 shooter to two shooters, tell us what happened.

11:07:49 19 A. I have to go over the facts again.

11:07:51 20 Q. No, I'm saying you understood that was significant if an
11:07:54 21 eyewitness transfers from one shooter to two shooters, that's
11:07:57 22 a big deal in your investigation, correct?

11:07:59 23 A. It could be, yes.

11:08:00 24 Q. All right. And then you didn't memorialize any
11:08:04 25 explanation for why he was changing from one shooter to two

11:08:07 1 shooters, correct, in your report?

11:08:08 2 A. Give a big explanation, you're correct.

11:08:11 3 Q. You didn't give any explanation, did you?

11:08:15 4 A. No.

11:08:15 5 Q. So tell us what you remember -- by the way, do you

11:08:18 6 remember the conversation?

11:08:18 7 A. I remember some basics.

11:08:21 8 Q. All right. What was Randy's explanation for why he was

11:08:23 9 changing from one shooter to two shooters from your memory,

11:08:26 10 sir?

11:08:26 11 A. I didn't ask for a big explanation. He just told me he

11:08:31 12 saw two guys, he indicated that he was going to be able to

11:08:34 13 identify at least two subjects and I leave it at that.

11:08:40 14 Q. You understood at Mr. Fields' at his criminal trial has to

11:08:44 15 cross-examine Randy Langston?

11:08:45 16 A. I assume so.

11:08:46 17 Q. And to do that he needs you to memorialize the details,

11:08:49 18 right?

11:08:50 19 A. Look, every detail.

11:08:55 20 Q. Every detail?

11:08:56 21 A. Could not be memorialized.

11:09:00 22 Q. Let's talk about the car. Did Randy when you were talking

11:09:03 23 to Randy, did he tell you that the car was located on the side

11:09:07 24 of the building where he described it in court yesterday, the

11:09:10 25 side front?

11:09:10 1 A. I don't recall the specifics. That side front, I don't
11:09:16 2 recall that.

11:09:16 3 Q. All right. And the reason you don't recall is because
11:09:18 4 it's been too gosh darn long, right?

11:09:22 5 MR. KULWIN: Judge, I am going to object asked and
11:09:24 6 answered.

11:09:24 7 BY MR. LOEVY:

11:09:24 8 Q. And that's why you wrote police reports?

11:09:26 9 MR. KULWIN: Objection.

11:09:27 10 THE COURT: Sustained to the first question.

11:09:28 11 BY MR. LOEVY:

11:09:28 12 Q. Let's take a look at what Randy told you back on May 20th,
11:09:34 13 1985. This is plaintiff's 86, page 17.

11:09:38 14 A. Okay.

11:09:39 15 Q. He stated that the two then fled through the breezeway to
11:09:42 16 the parking lot, did he not?

11:09:44 17 A. Yes.

11:09:44 18 Q. And the reason you wrote it down is because that's your
11:09:47 19 job, right, to record details like that?

11:09:50 20 A. That detail, yes, I recorded it.

11:09:54 21 Q. The parking lot is behind the building, is it not?

11:09:57 22 A. You are right.

11:09:57 23 Q. And that is an illustration, is it not, why if you write
11:10:04 24 down the details then someone on the stand can be
11:10:06 25 cross-examined if they change their story, right?

11:10:09 1 MR. KULWIN: Objection, asked and answered.

11:10:10 2 THE COURT: Sustained.

11:10:11 3 BY MR. LOEVY:

11:10:15 4 Q. Another reason why writing down details is important is
11:10:19 5 that locks them in and they can't change later, right?

11:10:23 6 MR. KULWIN: Objection, asked and answered.

11:10:24 7 THE COURT: Sustained. Covered on direct.

11:10:27 8 BY MR. LOEVY:

11:10:27 9 Q. You talked to Mr. Kulwin about Carlos Willis, Cleveland
11:10:31 10 Ball, Torrence White, all the various witnesses, do you
11:10:34 11 remember that?

11:10:34 12 A. I spoke to him about the other three who viewed the
11:10:37 13 lineup, yes.

11:10:37 14 Q. How many guys out there said that the people were wearing
11:10:40 15 masks and how many said they weren't wearing masks, do you
11:10:43 16 remember?

11:10:43 17 A. I would say those six for sure and maybe some more. Those
11:10:52 18 six for sure otherwise I wouldn't bring them to the lineup.

11:10:54 19 Q. Randy said they were wearing a mask, right?

11:10:57 20 MR. KULWIN: Objection, misstates the evidence and
11:10:58 21 there is no basis.

11:10:59 22 MR. LOEVY: Objection, your Honor.

11:11:00 23 THE COURT: So first of all, I don't need the second
11:11:05 24 part of that. Let me see you at sidebar for a second. I want
11:11:15 25 to elaborate.

11:11:16 1 (The following proceedings were had at sidebar outside the
11:11:18 2 hearing of the jury:)

11:11:18 3 THE COURT: Look, redirect examination does not mean
11:11:20 4 that you get to recover all of the points just so you get the
11:11:23 5 last word on it. If there's anything that has been covered
11:11:27 6 beyond sufficiently in this case it's Randy Langston with this
11:11:31 7 witness. I am going to sustain the objection on that reason
11:11:33 8 unless you have something really specific that you think came
11:11:36 9 up new during cross. I mean, redirect isn't to repeat direct.
11:11:40 10 It just isn't.

11:11:41 11 MR. LOEVY: Your Honor, I worked hard to make new
11:11:43 12 points.

11:11:43 13 THE COURT: What's the new point?

11:11:44 14 MR. LOEVY: The point is about masks or not masks, I
11:11:47 15 want to list the people that said masks, list the people that
11:11:51 16 said not masks. Isn't it true a bunch of people said not
11:11:55 17 masks. Your Honor, I will finish well before lunch.

11:11:57 18 THE COURT: First of all, again as I said to both
11:12:00 19 sides, that if it doesn't take very long, it's admissible.
11:12:05 20 What's your point, Mr. Kulwin.

11:12:06 21 MR. KULWIN: If he is going to do that, he has to put
11:12:07 22 the report in front of him because he is misrepresenting that
11:12:10 23 everybody said there were masks. He is relying on the
11:12:12 24 testimony from the trial. He's not relying on what the
11:12:15 25 reports say. And so he's purposely misleading the record in

11:12:18 1 my view, it's a misleading argumentative question and he has
11:12:21 2 gone over it time and time again. All I questioned was on
11:12:24 3 what -- is there anything in the reports that say people are
11:12:28 4 wearing masks, so he can cross-examine and say are the reports
11:12:32 5 wrong, are they inaccurate.

11:12:33 6 THE COURT: Are you relying on the reports, are you
11:12:35 7 relying on the trial testimony?

11:12:37 8 MR. LOEVY: He tells us he remembers every witness.
11:12:40 9 If he is going to say I don't remember what the witnesses were
11:12:42 10 wearing, that's even more relevant. He knows who was wearing
11:12:46 11 and masks and who weren't and if he doesn't remember, that's
11:12:48 12 even better because with Mr. Kulwin he is bang bang bang bang.

11:12:52 13 THE COURT: I am going to let you do it if you just
11:12:54 14 get right to the point. Okay?

11:12:56 15 MR. LOEVY: Yeah.

11:12:58 16 (The following proceedings were had in open court in the
11:13:04 17 presence and hearing of the jury:)

11:13:04 18 THE COURT: Okay. The objection is overruled. You
11:13:06 19 can proceed.

11:13:06 20 BY MR. LOEVY:

11:13:07 21 Q. List the witnesses who said they were wearing masks, sir?

11:13:09 22 MR. KULWIN: Judge, at what point?

11:13:11 23 MR. LOEVY: At any point.

11:13:12 24 THE COURT: At any point.

11:13:13 25 THE WITNESS: List the witnesses who said they were

11:13:16 1 wearing masks?

11:13:17 2 BY MR. LOEVY:

11:13:17 3 Q. Yes.

11:13:17 4 A. At any time?

11:13:19 5 Q. Yes.

11:13:20 6 A. I would have to go through each of my reports to see who

11:13:23 7 had.

11:13:24 8 Q. You don't remember?

11:13:24 9 A. --

11:13:26 10 MR. KULWIN: Judge.

11:13:28 11 THE WITNESS: Should I answer or no, Judge?

11:13:30 12 THE COURT: Go ahead. Go ahead.

11:13:34 13 THE WITNESS: At any time, several of them said they

11:13:37 14 were wearing masks and pulled them off. You know what --

11:13:40 15 BY MR. LOEVY:

11:13:40 16 Q. Which?

11:13:40 17 A. The question.

11:13:44 18 Q. The question is which, which men, which boys said he was

11:13:48 19 wearing masks?

11:13:48 20 MR. KULWIN: At what point, Judge?

11:13:50 21 MR. LOEVY: At any point, your Honor?

11:13:52 22 THE COURT: Okay.

11:13:52 23 THE WITNESS: At any point, I would say they

11:13:54 24 indicated at times the subjects had masks.

11:14:00 25 BY MR. LOEVY:

11:14:01 1 Q. Which witnesses said that, sir?

11:14:02 2 A. I use the six for sure in my report.

11:14:05 3 Q. Which six, names, names, please?

11:14:07 4 A. Okay. Names, Eric Langston, Randy Langston, Gerald

11:14:10 5 Morris, Torrence White, Carlos Willis, and Eric Benson. Here,

11:14:18 6 I don't know verbatim that they said oh, they had masks. What

11:14:23 7 I remember is they said they saw faces,. I don't know how to

11:14:29 8 answer your question. I apologize. It's kind of a --

11:14:32 9 Q. Your memory is not perfect, right?

11:14:34 10 MR. KULWIN: Judge, I am going to object.

11:14:36 11 Argumentative. Sustained.

11:14:37 12 THE COURT: Sustained.

11:14:38 13 MR. KULWIN: We will stipulate.

11:14:39 14 THE COURT: Please, don't do that.

11:14:41 15 MR. KULWIN: Okay.

11:14:41 16 THE COURT: The objection is sustained.

11:14:43 17 BY MR. LOEVY:

11:14:43 18 Q. For example, when you talked about Inetta Watts with Mr.

11:14:47 19 Kulwin yesterday it sounded like that happened, you know, in a

11:14:49 20 very firm recent memory, didn't it?

11:14:51 21 A. That's because it's still imbedded in my memory.

11:14:56 22 Q. We will talk about that in a minute.

11:14:58 23 Let's talk about Gerald Morris for a bit. Actually,

11:15:04 24 before we do, let's talk about James Langston. He was one of

11:15:07 25 the boys who said there was a mask, correct?

11:15:09 1 A. Correct.

11:15:09 2 Q. And he was one of the Langstons who says the masks got
11:15:15 3 lifted you, you discussed that with Mr. Kulwin, right?

11:15:17 4 A. I don't know. If you say it occurred, I'll agree with
11:15:25 5 you.

11:15:25 6 Q. I am just asking for your memory, sir?

11:15:27 7 THE COURT: Let's just get to the question. Let's
11:15:29 8 not go over what was asked earlier this morning.

11:15:31 9 BY MR. LOEVY:

11:15:32 10 Q. If Mr. Langston said he lifted up a mask, did your report
11:15:36 11 indicate who he saw?

11:15:37 12 A. My report?

11:15:38 13 Q. Yes.

11:15:38 14 A. No.

11:15:39 15 Q. Okay. Showing you Plaintiff's Exhibit 1104, this is a
11:15:44 16 memo from the street file, James Langston was interviewed, he
11:15:51 17 was playing baseball, and this is the guy who said he saw the
11:15:55 18 brother of Rick's Baldwin, correct?

11:15:58 19 A. Reading along where you're reading, paraphrasing.

11:16:03 20 Q. If James Langston saw the man in the car without his mask
11:16:07 21 on, why didn't you put in his report that he saw somebody who
11:16:09 22 was not one of your four suspects?

11:16:11 23 MR. KULWIN: Judge, I am going to object. Lack of
11:16:13 24 foundation. He never talked to --

11:16:15 25 THE COURT: Lay the foundation, please.

11:16:17 1 BY MR. LOEVY:

11:16:17 2 Q. James Langston was one. Of the people in the report,
11:16:22 3 this is Plaintiff's Exhibit 8614?

11:16:24 4 MR. KULWIN: Judge, could we have a date of the year
11:16:26 5 that interview took place.

11:16:28 6 THE COURT: It's at the top of the page. April 30th
11:16:30 7 of '84.

11:16:31 8 THE WITNESS: I got it.

11:16:32 9 BY MR. LOEVY:

11:16:32 10 Q. Do you remember talking to Mr. Kulwin about James Langston
11:16:35 11 either yesterday or the day before?

11:16:37 12 MR. KULWIN: I object to that. I asked him about the
11:16:38 13 84 investigation. Mr. Loevy.

11:16:40 14 MR. LOEVY: Objection, your Honor.

11:16:41 15 MR. KULWIN: It's leading and argumentative.

11:16:45 16 THE COURT: The objection is overruled.

11:16:46 17 THE WITNESS: Okay.

11:16:47 18 BY MR. LOEVY:

11:16:48 19 Q. You did talk about James Langston yesterday when you went
11:16:50 20 over your investigation with Mr. Kulwin, right?

11:16:52 21 A. Okay.

11:16:52 22 Q. So isn't it true that James Langston claimed that the
11:16:57 23 person in the car was someone other than your four guys?

11:17:01 24 A. In this report, yes.

11:17:03 25 Q. Okay. Why didn't you include that in your police report?

11:17:08 1 MR. KULWIN: Objection, lack of foundation as to
11:17:10 2 whether he ever talked to James Langston.

11:17:12 3 THE COURT: Overruled.

11:17:12 4 THE WITNESS: I will give you two key reasons. One,
11:17:16 5 James Langston had to be discounted and covered by prior
11:17:23 6 detectives and the second key reason is I'm starting an
11:17:27 7 investigation with new, fresh evidence and I am not going to
11:17:33 8 go back over and question other investigators, go over the
11:17:38 9 whole case again. I knew what I had in my hands.

11:17:42 10 BY MR. LOEVY:

11:17:42 11 Q. All right. You said that you did this canvass, right, for
11:17:47 12 your new investigation?

11:17:47 13 A. Yes.

11:17:49 14 Q. And you told us that sometime -- you were part of the
11:17:55 15 special operations unit, right?

11:17:56 16 A. At that point, I was an area one detective division --

11:18:02 17 Q. Earlier, earlier in your career, you were a member of
11:18:05 18 special operations or was it later?

11:18:06 19 A. No, special operations unit was when I was a patrolman
11:18:12 20 back in 19 -- I'm sorry.

11:18:15 21 THE COURT: Back in the 19 what?

11:18:17 22 THE WITNESS: 70s.

11:18:19 23 BY MR. LOEVY:

11:18:19 24 Q. All right. Sir, you did tell Mr. Kulwin that because of
11:18:23 25 the gang situation, sometimes people were are reluctant to

11:18:28 1 talk to the police, right?

11:18:29 2 A. Yes.

11:18:29 3 Q. You said that one of the ways you would combat that is
11:18:33 4 take the kids, put them on the hood of the car, handcuff them?

11:18:40 5 A. I think Judge Kennelly told me not to go into that or
11:18:43 6 stopped me.

11:18:44 7 THE COURT: It was discussed.

11:18:45 8 MR. LOEVY: I heard it.

11:18:45 9 THE WITNESS: It was discussed, okay.

11:18:47 10 BY MR. LOEVY:

11:18:47 11 Q. And is it your explanation that if you took the kids,
11:18:51 12 handcuffed them, put them on the hood of the car that
11:18:53 13 facilitated them giving you information?

11:18:55 14 MR. KULWIN: Objection, Judge. Argumentative,
11:18:57 15 misstates his testimony.

11:18:58 16 MR. LOEVY: That's exactly what it was.

11:18:59 17 THE COURT: Overruled. Overruled. You can cover it
11:19:04 18 on recross if you want to.

11:19:06 19 MR. KULWIN: Okay.

11:19:06 20 THE WITNESS: I can speak, Judge.

11:19:09 21 THE COURT: The question is whether that would
11:19:11 22 facilitate those people giving you the information.

11:19:13 23 THE WITNESS: The context that I put that in -- if a
11:19:15 24 guy came up to me whispered in my ear, I know who did it, I
11:19:19 25 know who did it, then I would nod him down the street, I would

11:19:23 1 either do it myself or a patrol officer or somebody put him on
11:19:27 2 the wall or over the car, cuff him up so that the rest of the
11:19:31 3 neighborhood would think that that guy was being arrested
11:19:34 4 rather than he was being an informant or a witness. That
11:19:39 5 would be one such tactic, and others would be once I have an
11:19:44 6 indication I have a witness.

11:19:44 7 BY MR. LOEVY:

11:19:46 8 Q. Let's stick with this one?

11:19:48 9 MR. KULWIN: Objection.

11:19:48 10 THE COURT: No, because it was a nonresponsive
11:19:51 11 answer. Ask the question again.

11:19:53 12 BY MR. LOEVY:

11:19:53 13 Q. When would you do that, put guys on the hood or the wall
11:19:56 14 and cuff them, would you get their permission to do that?

11:19:58 15 A. Yes.

11:19:59 16 Q. All right. Because without permission, obviously, you
11:20:03 17 can't do that to witnesses, right, you can't cuff them and
11:20:08 18 handcuff just to get information, right?

11:20:10 19 A. Yeah, that would be a normal procedure, no.

11:20:14 20 Q. You say you canvassed the whole building, correct?

11:20:16 21 A. I would say that we intended to canvass the whole
11:20:23 22 building. Do we always get every single apartment, no,
11:20:26 23 responses.

11:20:27 24 Q. All right.

11:20:27 25 A. There would be no responses.

11:20:29 1 Q. There was no canvass report created, correct?

11:20:31 2 A. There was though canvass report, well, it's understood,
11:20:36 3 yes, I canvassed the building. Somewhere in that report says
11:20:39 4 you went back to 706, I spent and I testified two days
11:20:43 5 canvassing.

11:20:44 6 Q. All right. Here is my question?

11:20:46 7 A. Yes.

11:20:46 8 Q. There is not one witness in your report that was not also
11:20:50 9 identified by the detectives back in 1984 except for Gerald
11:20:54 10 Morris, that is true, right?

11:20:55 11 A. I don't know. Maybe you're right.

11:21:00 12 Q. Can you name any witness that you spoke to that was not
11:21:05 13 just a reinterview of the people you spoke to in 1984?

11:21:08 14 A. Either or circumstantial, I don't know. The answer is I
11:21:15 15 don't know. You're right in that the key of that scene became
11:21:18 16 a hard key of my follow-up, yes.

11:21:22 17 Q. You said when you would interview people, sometimes people
11:21:26 18 would say I heard shots, but I didn't see anything but I
11:21:29 19 didn't write that down. Did you tell that to Mr. Kulwin?

11:21:31 20 A. I didn't use the term I didn't write that down. I did say
11:21:34 21 that people would say, yeah, I heard the shots, but I didn't
11:21:37 22 see anything, yes.

11:21:37 23 Q. But I thought you said then you didn't bother to put that
11:21:41 24 in your report?

11:21:41 25 A. Not in my reports, correct.

11:21:44 1 Q. All right. So I just want to establish that. If someone
11:21:47 2 -- if you knocked on a door and the person said Ms. Gorman,
11:21:51 3 did you see anything, I heard shots, but I didn't see
11:21:53 4 anything, that's not information, you would have memorialized?
11:21:57 5 A. Not always. In some reports -- it's circumstantial, but
11:22:01 6 it was in prior reports anyway.
11:22:02 7 Q. You didn't do that in this case in any event, correct?
11:22:05 8 A. I did not.
11:22:05 9 Q. All right. Let's talk about Inetta Watts. It sounds like
11:22:10 10 you're claiming a very firm memory of this, correct?
11:22:12 11 A. I do.
11:22:12 12 Q. All right. Now, she cooperated with the police in 1984,
11:22:16 13 did she not?
11:22:16 14 A. I believe Ms. Watts was interviewed in 1984. I believe
11:22:23 15 you're correct.
11:22:23 16 Q. She gave her phone number, you know that too?
11:22:29 17 A. Sure.
11:22:29 18 Q. The 1984 detectives before you got there, they had
11:22:33 19 photographs, correct, in the investigative file?
11:22:38 20 A. I don't know what they had on the scene.
11:22:39 21 Q. Do you know if they showed her Earl Hawkins's photo?
11:22:43 22 A. You are going to ask for my opinion?
11:22:49 23 Q. Do you know?
11:22:50 24 THE COURT: Do you know?
11:22:50 25 THE WITNESS: Okay. I am going to be short and don't

11:22:54 1 get in trouble.

11:22:55 2 BY MR. LOEVY:

11:22:55 3 Q. Being short doesn't help?

11:22:56 4 A. No, no, I am not going to state one way or the other. No.

11:22:59 5 Q. Page 86, page 6. This is the original 1984 report.

11:23:05 6 Somebody memorialized a canvass, would you agree with me that

11:23:10 7 they are talking about people they interviewed?

11:23:11 8 A. I am.

11:23:14 9 Q. It looks like Inetta Watts told hood and Evans I heard

11:23:19 10 numerous shots, looked out her window and saw two men she knew

11:23:22 11 from the building laying on the sidewalk, correct?

11:23:24 12 A. You are talking the victims here, yes.

11:23:28 13 Q. All right. Hood and the guys who took this original

11:23:32 14 report had no way to know either way whether that was going to

11:23:35 15 turn out to be pertinent or not, right? They couldn't have

11:23:42 16 known in advance, right?

11:23:43 17 A. Couldn't have known in advance.

11:23:46 18 Q. That this was going to turn out to be pertinent?

11:23:49 19 A. No, I don't know what they knew, right.

11:23:50 20 Q. Right. But the fact is Inetta Watts in 1984 told those

11:23:55 21 detectives that she didn't see the shooting, correct?

11:24:00 22 MR. KULWIN: Objection, Judge. That's not what it

11:24:02 23 says.

11:24:02 24 THE COURT: You can answer the question.

11:24:04 25 THE WITNESS: I don't know.

11:24:05 1 BY MR. LOEVY:

11:24:05 2 Q. When you read this report and knocked on Ms. Watts' door,
11:24:09 3 you knew that she had already told the police she didn't see
11:24:11 4 the shooting, right?

11:24:12 5 MR. KULWIN: Objection, Judge. Argumentative.

11:24:14 6 THE COURT: He's already answered the question.

11:24:16 7 BY MR. LOEVY:

11:24:16 8 Q. All right.

11:24:18 9 A. Thanks.

11:24:19 10 Q. Now, you've interviewed I think you told Mr. Kulwin
11:24:22 11 thousands of people over your career, correct?

11:24:25 12 A. Yes, that would be true.

11:24:28 13 Q. And Mr. Kulwin showed you the summary of your report from
11:24:31 14 the Inetta Watts interview. Do you remember reading that to
11:24:35 15 the jury?

11:24:35 16 A. I remember Inetta Watts interview, yes.

11:24:38 17 Q. All right. And are you claiming you actually remember
11:24:41 18 this interview or are you saying you can read it like we can
11:24:44 19 all read it?

11:24:45 20 A. I'm saying both.

11:24:45 21 Q. All right. You say you did show Watts the photos, right?

11:24:54 22 A. The entire stack.

11:24:54 23 Q. All right. Now, I want to ask this question about whether
11:24:57 24 you have any proof, and by proof, let me explain my
11:25:00 25 definition.

11:25:00 1 A. Okay. I'll be careful here.

11:25:02 2 Q. Evidence, documents, anything other than your memory,
11:25:05 3 okay, do you understand what I mean by proof?

11:25:07 4 MR. KULWIN: I am going to object. Asked and
11:25:08 5 answered.

11:25:08 6 THE COURT: Let me hear the question and then I will
11:25:11 7 rule on it.

11:25:11 8 BY MR. LOEVY:

11:25:12 9 Q. Do you understand what I mean by proof?

11:25:14 10 THE COURT: Any documentation?

11:25:16 11 MR. LOEVY: Yes.

11:25:16 12 BY MR. LOEVY:

11:25:16 13 Q. Or other proof?

11:25:17 14 A. Yes.

11:25:17 15 Q. Do you have any proof that you showed Ms. Watts more than
11:25:20 16 Mr. Hawkins' photo?

11:25:21 17 A. Yes.

11:25:22 18 Q. Okay. What proof is that?

11:25:23 19 A. Put it into my reports that I had a stack of 20 to 25
11:25:29 20 photos she looked at and the other witnesses.

11:25:36 21 Q. All right. I am going to show you your report. And you
11:25:39 22 show me where it says 20 to 25 photos?

11:25:41 23 MR. KULWIN: Judge, could we have the whole report?

11:25:43 24 THE COURT: Hand him the whole report.

11:25:44 25 MR. LOEVY: Sure.

11:25:46 1 BY MR. LOEVY:

11:25:46 2 Q. I am going to hand you your original report. This is the
11:25:49 3 17th page.

11:25:51 4 A. Okay.

11:25:51 5 THE COURT: The reference to Ms. Watts is on page 17?

11:25:55 6 MR. LOEVY: Yes. They are numbered on the bottom
11:25:58 7 left corner.

11:25:58 8 THE WITNESS: Okay.

11:25:59 9 MR. LOEVY: I will publish it while we're looking.

11:26:01 10 THE COURT: You're asking him to look for where it
11:26:04 11 says 20 to 25.

11:26:06 12 MR. LOEVY: Or look on the screen, whichever is his
11:26:09 13 preference.

11:26:09 14 THE WITNESS: Where are we at? In this paragraph?

11:26:12 15 BY MR. LOEVY:

11:26:12 16 Q. What I'm saying is while going through -- where does it
11:26:17 17 say stack?

11:26:17 18 A. Here, they then looked through a stack of photos.

11:26:20 19 Q. Okay.

11:26:21 20 A. Stack.

11:26:22 21 Q. Right.

11:26:23 22 A. All right.

11:26:23 23 Q. The 20 to 25, that's memory more, correct?

11:26:29 24 A. Yes.

11:26:31 25 Q. All right. I am going to show you document -- Plaintiff's

11:26:35 1 Exhibit 442, page 85. This is from one of the basement files.

11:26:40 2 This is an example of the kind of document you create when you

11:26:44 3 do a photo array, correct?

11:26:45 4 A. On occasion, yes.

11:26:49 5 Q. Okay. This is proof, right?

11:26:52 6 MR. KULWIN: I object, argumentative.

11:26:54 7 THE COURT: Sustained.

11:26:57 8 BY MR. LOEVY:

11:26:57 9 Q. All right. If someone is making an identification, what

11:27:02 10 photos you showed is actually the proof, right, that's the

11:27:05 11 evidence?

11:27:06 12 MR. KULWIN: Your Honor, objection, asked and

11:27:09 13 answered, argumentative.

11:27:09 14 THE COURT: I think the topic was covered

11:27:12 15 sufficiently on direct.

11:27:13 16 BY MR. LOEVY:

11:27:13 17 Q. Okay. Let's talk about your interview with Ms. Watts.

11:27:16 18 Now, you claim that she was very, very afraid if I understand?

11:27:22 19 A. Extremely I think was the word I used.

11:27:24 20 Q. Now, she did involve her daughter, correct?

11:27:27 21 A. She told me her daughter was there, I believe, at the

11:27:32 22 time.

11:27:32 23 Q. So you're interviewing her and she said my daughter can

11:27:36 24 help too, let's get her involved, right?

11:27:38 25 A. She allowed me -- her daughter, if I remember correctly,

11:27:42 1 her daughter did not live in town at that time, so I did make
11:27:47 2 a phone contact and I was going to try and catch up with her
11:27:50 3 later when there was time.

11:27:51 4 Q. So Inetta Watts facilitated you involving her daughter in
11:27:55 5 this murder?

11:27:56 6 A. Involving her in the murder?

11:28:00 7 Q. Well, the murder investigation.

11:28:01 8 A. She provided me information leading me to believe her
11:28:07 9 daughter may have some information, yes.

11:28:09 10 Q. Would you agree that's inconsistent with the notion that
11:28:12 11 she was superterrified to be involved?

11:28:14 12 MR. KULWIN: Objection, Judge, argumentative.

11:28:15 13 THE COURT: Sustained.

11:28:18 14 BY MR. LOEVY:

11:28:19 15 Q. All right. Looks like on page 3 of the same report, Ms.
11:28:23 16 Watts allowed me to speak long distance with her daughter
11:28:26 17 Angela Watts. Arrangements are being setup to interview
11:28:31 18 Angela Watts in person at a later date. Do you see that?

11:28:33 19 A. I do.

11:28:34 20 Q. Okay. Did Ms. Watts make those arrangements so that you
11:28:38 21 could talk to her daughter about your murder investigation?

11:28:40 22 A. I don't believe I ever caught up with Angela Watts or got
11:28:44 23 to follow up on that issue.

11:28:46 24 Q. Okay. Now, are you claiming that Ms. Watts identified
11:28:55 25 Hawkins' photo when you were talking to Mr. Kulwin? Do you

11:28:58 1 remember the thing about she stopped at the photo?

11:29:01 2 MR. KULWIN: Objection, asked and answered,

11:29:03 3 argumentative.

11:29:03 4 MR. LOEVY: No, your Honor.

11:29:04 5 THE COURT: Okay. Hang on a second. Rephrase the

11:29:10 6 question.

11:29:10 7 BY MR. LOEVY:

11:29:11 8 Q. When you were describing the thing about she pointed at

11:29:13 9 the photo and closed her windows, do you remember that

11:29:15 10 testimony?

11:29:16 11 A. Closed the blinds, yes.

11:29:19 12 Q. Are you claiming she identified Earl Hawkins as the

11:29:22 13 shooter?

11:29:22 14 MR. KULWIN: Objection, Judge, claiming?

11:29:24 15 THE COURT: Overruled. Is that what you're saying

11:29:26 16 happened?

11:29:27 17 THE WITNESS: Saying she would not -- can I answer

11:29:33 18 it?

11:29:33 19 THE COURT: Is that what you're saying.

11:29:35 20 BY MR. LOEVY:

11:29:35 21 Q. I want a yes, no, was she claiming he was a witness -- I'm

11:29:38 22 sorry, he was a shooter?

11:29:39 23 A. I'm not climbing that, what you just said.

11:29:43 24 Q. You did say to Mr. Kulwin that that was a big part of your

11:29:46 25 probable cause, Ms. Watts' identification, right?

11:29:48 1 A. In my mind, yes.

11:29:51 2 Q. Did you also consider that when she was interviewed a year
11:29:55 3 earlier all she said was she heard shots and saw the victims?

11:29:58 4 MR. KULWIN: Objection, asked and answered, Judge.

11:30:00 5 MR. LOEVY: I'm asking.

11:30:01 6 THE COURT: If I want a response. I will ask for it.

11:30:05 7 Hang on a second. Overruled. You can answer the question.

11:30:07 8 THE WITNESS: As I think I just stated, people come

11:30:12 9 forward later, yes, this woman reconsidered. I believe this

11:30:17 10 woman when I interviewed her. That's the best I can tell you,

11:30:21 11 that she was helping me and I believed her. I believed her to

11:30:25 12 be a sincere, nice woman providing information while not

11:30:30 13 getting herself killed or jeopardized.

11:30:33 14 BY MR. LOEVY:

11:30:34 15 Q. Or her daughter?

11:30:34 16 A. I'm sorry.

11:30:35 17 Q. Or her daughter? I will withdraw it, your Honor?

11:30:40 18 A. I was really concerned with Ms. Watts then.

11:30:42 19 Q. All right. You did show Inetta Watts your photographs in
11:30:46 20 the building, correct?

11:30:47 21 A. Yes.

11:30:49 22 Q. Okay. Then how do you remember that you didn't show

11:30:52 23 Carlos Willis, Cleveland Ball and Torrence White your

11:30:56 24 photographs in the building?

11:30:57 25 A. Because I remember.

11:31:00 1 Q. All right. Do you have any proof other than your memory?

11:31:02 2 A. I think -- well, I don't want to get in an argument, so

11:31:10 3 whatever you consider proof could be them saying I didn't show

11:31:15 4 it to them until the 16th. I am not going to argue with you.

11:31:18 5 Q. Now, you did say you wouldn't have put Carlos Willis in a

11:31:24 6 lineup unless you had some reason to believe he saw it,

11:31:27 7 correct?

11:31:27 8 A. Yeah, that would be a waste of time.

11:31:31 9 Q. And Carlos was unable to provide you a description,

11:31:33 10 correct?

11:31:33 11 A. He was unable to make an identification, you're correct.

11:31:37 12 Q. He was unable to provide a description, correct?

11:31:40 13 MR. KULWIN: Objection, argumentative, lacks

11:31:43 14 foundation, lacks basis.

11:31:44 15 THE COURT: Overruled.

11:31:46 16 THE WITNESS: I don't know that he was part of the

11:31:50 17 initial compilation of witnesses, so the answer is I don't

11:31:53 18 know whether Carlos Willis was able to provide.

11:31:56 19 BY MR. LOEVY:

11:31:57 20 Q. I asked you, was Carlos Willis able to give you any

11:32:00 21 description?

11:32:00 22 A. I don't recall.

11:32:01 23 Q. Okay. Obviously, if he had, you would have written it

11:32:04 24 down, right?

11:32:04 25 MR. KULWIN: Judge, objection, argumentative.

11:32:06 1 THE COURT: Sustained. It's been covered
11:32:08 2 sufficiently.
11:32:08 3 BY MR. LOEVY:
11:32:09 4 Q. Then why did you put Willis in a lineup if he couldn't
11:32:11 5 give you a description?
11:32:13 6 A. Because he saw faces.
11:32:14 7 Q. All right. Why did you put Cleveland Ball in -- Eric
11:32:19 8 Benson in a lineup if he couldn't give you any description?
11:32:22 9 MR. KULWIN: Objection, lack of foundation.
11:32:24 10 THE COURT: It's been covered sufficiently.
11:32:25 11 Overruled. Sustained, rather.
11:32:27 12 BY MR. LOEVY:
11:32:29 13 Q. You mentioned -- by the way, you mentioned the composite
11:32:35 14 description that was in 1984, that's what was mentioned,
11:32:39 15 right?
11:32:40 16 A. Yes.
11:32:41 17 Q. To give the jury some context, the original police report
11:32:45 18 did not attribute any description to any witness, correct?
11:32:49 19 MR. KULWIN: Judge, I am going to object. It's
11:32:51 20 argumentative.
11:32:53 21 MR. LOEVY: No -- sorry.
11:32:55 22 THE COURT: You can ask that as a lead-in question
11:32:58 23 because it has been covered quite extensively.
11:33:00 24 BY MR. LOEVY:
11:33:01 25 Q. Do you remember the question, sir?

11:33:02 1 A. I kind of got your gist.

11:33:04 2 Q. The gist was that the original detectives did not
11:33:07 3 attribute any description to any particular witness, right?

11:33:10 4 A. One and only one, I would say you're -- from my knowledge,
11:33:16 5 I would say you're correct. No particular person.

11:33:21 6 Q. Right. And of the 12 people, all it says is at the
11:33:23 7 beginning here, wanted, and two descriptions, right?

11:33:27 8 A. Correct.

11:33:29 9 Q. This is page 864?

11:33:31 10 A. But it does not say, for example, Carlos Willis said this
11:33:35 11 or Randy Langston said that, there's no attribution to this,
11:33:38 12 right.

11:33:39 13 A. You're correct.

11:33:39 14 Q. So there's no way from reading this report you know this
11:33:44 15 all came from one person or sort of like we'll do an average,
11:33:47 16 you just can't tell from reading the report?

11:33:49 17 MR. KULWIN: Objection, Judge. Argumentative.

11:33:50 18 THE COURT: Sustained.

11:33:51 19 BY MR. LOEVY:

11:33:51 20 Q. All right. This description without attribution does not
11:33:55 21 --

11:33:55 22 MR. KULWIN: Objection, argumentative. Not
11:33:58 23 attribution.

11:33:58 24 THE COURT: Rephrase the question.

11:34:00 25 BY MR. LOEVY:

11:34:00 1 Q. This composite description, can we call it a composite
11:34:05 2 description?

11:34:06 3 A. If that's the term you like.

11:34:07 4 Q. It does not describe Mr. Fields, does it? For example,
11:34:11 5 Mr. Fields was in his 30s?

11:34:12 6 MR. KULWIN: Judge, can he answer the question?

11:34:14 7 THE COURT: Yeah, if you are going to pose a
11:34:17 8 question, either withdraw the question or let him answer.

11:34:19 9 MR. LOEVY: Can I withdraw it?

11:34:21 10 THE COURT: Yes.

11:34:21 11 BY MR. LOEVY:

11:34:22 12 Q. Mr. Fields was in his 30s, correct?

11:34:24 13 A. Yeah, I would assume he was probably about 30 back then,
11:34:27 14 he is 60 now, right?

11:34:28 15 Q. Yes. So 21 to 25, 24, that does not describe Mr. Fields,
11:34:34 16 does it?

11:34:36 17 A. I wouldn't say that.

11:34:38 18 Q. Same with Mr. Hawkins, he also was over 30?

11:34:41 19 A. As I sit here right now, I can't remember the birthdays.
11:34:44 20 I'll go along with whatever you tell me his birthday was at
11:34:47 21 that time.

11:34:47 22 Q. If we are going to go from five, seven to six feet, male
11:34:51 23 black, sort of medium, that would describe probably 75 to 85
11:34:57 24 percent of the building, would you agree?

11:34:58 25 MR. KULWIN: Objection, Judge, calls for --

11:35:01 1 THE COURT: Hang on a second.

11:35:03 2 MR. KULWIN: Lack of foundation.

11:35:07 3 THE COURT: Overruled given the testimony about the

11:35:10 4 canvass.

11:35:11 5 BY MR. LOEVY:

11:35:12 6 Q. Do you remember the question?

11:35:12 7 A. Am I answering, Judge?

11:35:14 8 THE COURT: Go ahead.

11:35:14 9 THE WITNESS: Okay. You jumped from five seven on

11:35:18 10 one guy to six-foot. General descriptions, you're correct,

11:35:23 11 general descriptions can cover a multitude of people of

11:35:28 12 multitude.

11:35:28 13 BY MR. LOEVY:

11:35:29 14 Q. My question was --

11:35:30 15 A. Not excluding somebody.

11:35:32 16 Q. 75 to 85 percent of the people, maybe more or less than 75

11:35:37 17 percent of the people would fit this description?

11:35:38 18 A. Statistically, no, because somebody could be five two,

11:35:45 19 somebody could be six nine.

11:35:46 20 THE COURT: Ask another question.

11:35:47 21 BY MR. LOEVY:

11:35:48 22 Q. The reason I said five seven to six feet, it's not mixing

11:35:51 23 them so much as if anybody was anywhere between five seven and

11:35:55 24 six feet, they arguably would fit these descriptions?

11:36:00 25 MR. KULWIN: Judge, objection.

11:36:03 1 THE COURT: Sustained.

11:36:03 2 BY MR. LOEVY:

11:36:04 3 Q. Let's talk about Gerald Morris.

11:36:05 4 A. Okay.

11:36:05 5 Q. The meeting in Milwaukee you talked about with Mr. Kulwin
11:36:12 6 to set the context, this is after Mr. Fields' new trial, his
11:36:16 7 criminal retrial had been granted, correct?

11:36:18 8 A. It yeah, I believe so.

11:36:25 9 Q. That was the point. You needed Gerald to testify at the
11:36:28 10 retrial, right?

11:36:29 11 MR. KULWIN: Objection, Judge, argumentative.

11:36:31 12 THE COURT: Sustained.

11:36:32 13 BY MR. LOEVY:

11:36:32 14 Q. All right. You also knew by the time of this meeting that
11:36:36 15 Mr. Morris had signed that affidavit for Stainthorpe and
11:36:40 16 Lafferty, correct?

11:36:41 17 A. I knew on the way up there, yes.

11:36:43 18 Q. All right. And in the affidavit, he had said essentially
11:36:47 19 I can't be a witness at the retrial because I didn't see them,
11:36:49 20 correct?

11:36:50 21 MR. KULWIN: Objection, asked and answered.

11:36:51 22 THE COURT: Sustained. Just get to the question.
11:36:53 23 New question.

11:36:54 24 BY MR. LOEVY:

11:36:56 25 Q. The reason for the meeting was he had communicated he

11:36:58 1 didn't want to be part of the case anymore, correct?

11:37:00 2 A. The document you pointed out, that's the reason for the
11:37:07 3 meeting.

11:37:07 4 Q. And you now going into it that he was saying he didn't
11:37:11 5 want to be involved, didn't you?

11:37:12 6 MR. KULWIN: Objection, asked and answered,
11:37:13 7 argumentative.

11:37:14 8 THE COURT: Overruled.

11:37:18 9 THE WITNESS: I knew what was on that document, yes.

11:37:19 10 BY MR. LOEVY:

11:37:19 11 Q. And you told Mr. Kulwin that it was Sexton, Prawiec,
11:37:23 12 DiCiolla, Kelly and yourself, correct?

11:37:27 13 A. No.

11:37:28 14 Q. Who else was there?

11:37:29 15 A. You're saying DiCiolla, but neither was not there. He is
11:37:36 16 a supervisor in that office. So it was David Kelley, Brian
11:37:40 17 Sexton, myself, and the Cook County state's attorney
11:37:45 18 investigator Robert Prawiec and then a Milwaukee detective by
11:37:52 19 the name of David baker, I believe, who was there for part of
11:37:57 20 it or brought him there. I don't know if he sat in on the
11:37:59 21 interview or not.

11:38:00 22 Q. All right. That's the preface. Let get to the new part
11:38:03 23 now.

11:38:03 24 A. Okay.

11:38:04 25 Q. You knew going into that meeting there was going to be a

11:38:06 1 dispute later about whether the affidavit he signed was
11:38:09 2 legitimate, correct?

11:38:10 3 MR. KULWIN: Objection, argumentative. Calls for
11:38:16 4 speculation.

11:38:16 5 THE COURT: Rephrase the question.

11:38:17 6 BY MR. LOEVY:

11:38:18 7 Q. The reason you were going and the reason for the meeting
11:38:21 8 was because if Gerald was going to testify at the criminal
11:38:24 9 retrial, the affidavit was going to be a problem, right?

11:38:27 10 A. I am going to touch --

11:38:34 11 THE COURT: The a yes or no question.

11:38:37 12 THE WITNESS: Say this again, yeah, because I am
11:38:40 13 worried about saying things.

11:38:41 14 THE COURT: You know what, that needs to stop too.

11:38:44 15 THE WITNESS: I'm sorry, Judge.

11:38:45 16 THE COURT: The responses are yes or no.

11:38:49 17 THE WITNESS: I got it, I got it. Go ahead.

11:38:51 18 BY MR. LOEVY:

11:38:51 19 Q. When you went to the meeting, you understood that the
11:38:54 20 affidavit Mr. Morris had signed was going to create a
11:38:58 21 potential problem for the retrial, correct?

11:39:00 22 A. Yes.

11:39:00 23 Q. And that was talked about at the meeting, correct?

11:39:04 24 A. In a restaurant?

11:39:07 25 Q. Yes.

11:39:08 1 A. Yes.

11:39:08 2 Q. Now, you after the meeting, the state's attorney created a
11:39:12 3 summary that Mr. Kulwin read to you, correct?

11:39:14 4 A. The investigator created that summary, Bob Prawiec.

11:39:19 5 Q. Now, Morris' signature is on the one that Stainthorpe got,
11:39:25 6 right?

11:39:25 7 A. Yes.

11:39:26 8 Q. Morris' signature is not on the state's attorney's
11:39:31 9 summary, correct?

11:39:31 10 A. Yes, because that was created later.

11:39:34 11 Q. Okay. Why if the whole point was to go there and talk
11:39:38 12 about what we said we were going to talk about, why didn't you
11:39:41 13 ask Gerald to put his signature on a document that supported
11:39:44 14 your version of reality?

11:39:46 15 MR. KULWIN: Judge, I am going to object to version
11:39:48 16 of reality.

11:39:48 17 THE COURT: Rephrase the question. It's
11:39:51 18 argumentative as phrased.

11:39:52 19 BY MR. LOEVY:

11:39:52 20 Q. You told Mr. Kulwin?

11:39:53 21 THE COURT: Why didn't you ask him to put his
11:39:54 22 signature on the report, that would be a non-argumentative
11:39:57 23 question.

11:39:57 24 BY MR. LOEVY:

11:39:58 25 Q. Well, the report wasn't created until after, right, sir?

11:40:02 1 A. It was.

11:40:02 2 Q. So why didn't you ask Mr. Morris to sign a piece of paper
11:40:08 3 that was consistent with what you just described to Mr. Kulwin
11:40:11 4 yesterday?

11:40:12 5 A. I didn't. The state's attorney and Prawiec were doing the
11:40:17 6 interview. I didn't. That's all I can say. I didn't ask him
11:40:20 7 to sign anything.

11:40:22 8 Q. And you heard nobody in your presence ask him to sign
11:40:24 9 anything?

11:40:25 10 A. Not that I recall.

11:40:26 11 Q. Did Mr. Morris indicate he'd be willing to sign anything
11:40:29 12 that supports the version you described to Mr. Kulwin
11:40:31 13 yesterday?

11:40:32 14 A. I don't recall that actually being discussed.

11:40:36 15 Q. It's not uncommon to ask witnesses to sign statements, is
11:40:39 16 it?

11:40:39 17 A. I don't know if it is.

11:40:47 18 Q. Did he refuse?

11:40:48 19 A. Can it can be done, yes, uncommon is kind of general.
11:40:53 20 Yeah.

11:40:54 21 Q. You described to Mr. Kulwin, this is 24 B, this is the
11:40:59 22 affidavit that Stainthorpe took with his sworn signature,
11:41:03 23 correct?

11:41:03 24 A. Yes.

11:41:05 25 Q. This is the affidavit you guys brought with you to the

11:41:09 1 meeting, right?

11:41:10 2 A. Yes.

11:41:10 3 Q. And if I understood your description, by the way, of the
11:41:17 4 memo, the summary memo is the one you went through with Mr.
11:41:21 5 Kulwin, right? It doesn't exactly say he didn't see the
11:41:24 6 member, does it?

11:41:25 7 MR. KULWIN: Judge, I am going to object. It says
11:41:26 8 what it says. I object, argumentative.

11:41:31 9 THE COURT: I am going to sustain the objection.
11:41:32 10 Honestly, folks, it just dawned on me that we haven't taken a
11:41:37 11 break for that. I sincerely apologize. We are going to take
11:41:41 12 a break right now. My mistake.

11:41:43 13 (Short break.)

11:54:10 14 (The following proceedings were had in open court in the
11:54:12 15 presence and hearing of the jury:)

11:54:12 16 THE COURT: Mr. Loevy, you can go ahead.

11:54:13 17 MR. LOEVY: That you were.

11:54:14 18 BY MR. LOEVY:

11:54:14 19 Q. All right. We were talking about Gerald Morris's
11:54:16 20 affidavit and the meeting you had with him in Milwaukee in
11:54:20 21 2000. And if I understood your description of the protocol,
11:54:25 22 the idea was Gerald was supposed to underline the parts that
11:54:28 23 weren't true?

11:54:29 24 MR. KULWIN: Objection, Judge, the document says what
11:54:32 25 it says.

11:54:32 1 MR. LOEVY: No.

11:54:33 2 THE COURT: Underlying doesn't say anything.

11:54:35 3 BY MR. LOEVY:

11:54:36 4 Q. Now, remember when you described for Mr. Kulwin that you
11:54:39 5 had Mr. Morris under line parts that weren't true?

11:54:42 6 A. I didn't have -- the others did this thing.

11:54:45 7 Q. Tell the jury?

11:54:46 8 A. Go ahead.

11:54:47 9 Q. Tell the jury what -- what these under lines mean.

11:54:54 10 MR. KULWIN: Judge can he show him the exhibit?

11:54:58 11 THE COURT: The whole thing is on there.

11:55:01 12 BY MR. LOEVY:

11:55:01 13 Q. The summary that the state's attorneys created?

11:55:03 14 THE COURT: You know what, you have a question
11:55:05 15 pending. You either want that question answered or you are
11:55:11 16 starting new.

11:55:12 17 BY MR. LOEVY:

11:55:12 18 Q. Can you answer?

11:55:13 19 A. I apologize. Ask me the question again.

11:55:16 20 Q. All right. Sir, the protocol was that when you and Sexton
11:55:20 21 were there, he was supposed to underline the parts that
11:55:22 22 weren't true, right?

11:55:23 23 MR. KULWIN: Objection, Judge, misstates the
11:55:25 24 protocol.

11:55:25 25 THE COURT: He is asking a question. It doesn't

11:55:28 1 misstate anything. The objection is overruled.

11:55:30 2 THE WITNESS: From looking at this, I don't think
11:55:33 3 that's correct.

11:55:35 4 BY MR. LOEVY:

11:55:35 5 Q. Take a look at the state's attorney statement that goes
11:55:39 6 with it. You have it in front of you, it's 24 24 B.

11:55:45 7 A. This document. Go ahead.

11:55:47 8 Q. The second full paragraph explains what the underlining is
11:55:50 9 supposed to mean, right?

11:55:51 10 A. Gerald was asked -- do you want me to read this or no?

11:55:59 11 Q. You can read it to yourself and then just tell the jury
11:56:02 12 what the underlining was supposed to mean. Have you refreshed
11:56:09 13 your recollection?

11:56:10 14 A. Yes, I can read it and refresh. Gerald stated that most
11:56:13 15 of the statements was not what he had told the attorneys
11:56:15 16 earlier.

11:56:16 17 Q. What do these under lines mean, sir?

11:56:19 18 A. Well, I would say -- here. If you are going to ask me to
11:56:24 19 go through this document.

11:56:25 20 Q. Sir, it says Gerald was then asked to underline those
11:56:31 21 parts of the statement that he never told the attorneys,
11:56:33 22 correct? Wasn't that what you discussed with Mr. Kulwin?

11:56:36 23 A. I'm saying that what this report says and a previous line
11:56:43 24 says most. So, yeah, this could be --

11:56:48 25 Q. This report, 24 B, goes with -- this is the second page,

11:56:54 1 it's Gerald's affidavit with underlining on it, correct?

11:56:56 2 A. Correct.

11:56:58 3 Q. And wasn't the idea that Gerald was supposed to underline
11:57:01 4 the parts that weren't true?

11:57:02 5 A. Or what he had not told the attorneys. There's true and
11:57:09 6 -- never mind.

11:57:10 7 THE COURT: He's answered.

11:57:12 8 BY MR. LOEVY:

11:57:12 9 Q. Gerald did not at any point sign anything that says my
11:57:15 10 underlining means anything, can we agree on that?

11:57:19 11 A. I'll take your word for it.

11:57:21 12 Q. All right. Let's see what he underlined.

11:57:23 13 On April 28th, 84, he lived at 706 building. That's
11:57:27 14 true, isn't it?

11:57:28 15 A. It is.

11:57:28 16 Q. And he underlined it, right?

11:57:30 17 A. Yes.

11:57:31 18 Q. In the morning of April 28th, the gunshots, do you see
11:57:36 19 that?

11:57:36 20 A. Yes.

11:57:37 21 Q. Now, in the morning is underlined, right?

11:57:40 22 A. Yes.

11:57:40 23 Q. And that's true, isn't it?

11:57:42 24 A. To the facts, yes.

11:57:45 25 Q. All right. Running towards a car which was on Langley, is

11:57:49 1 that your opinion, is that true?

11:57:50 2 A. Yes.

11:57:52 3 Q. These men had masks on the entire time that I saw them and

11:57:56 4 I could not see their faces. That's underlined, isn't it?

11:57:58 5 A. That is.

11:58:00 6 Q. Now, Gerald did not under line I did not see these men

11:58:04 7 before I heard the shots, nor did he under line I do not know

11:58:07 8 who these men that I -- I do not know who these men were that

11:58:11 9 I saw running away, correct?

11:58:14 10 A. You're correct on what's on this document.

11:58:20 11 Q. He was not denying the parts that were not underlined,

11:58:24 12 right?

11:58:24 13 A. I am not saying what the protocol was or was not. I am

11:58:29 14 answering your questions what's underlined. I don't know what

11:58:32 15 the protocol was, whether misunderlined, underlined.

11:58:38 16 Q. The protocol according to 24 B was Gerald then underlined

11:58:42 17 the parts of the statement that were not what he had told the

11:58:47 18 attorney earlier. That's what the memo says, right?

11:58:49 19 A. That could be both, you're right. You're right. That's

11:58:55 20 what that means means.

11:58:57 21 Q. When you met with Gerald, you have a good memory of this

11:59:00 22 meeting, right?

11:59:01 23 A. I have a good meeting.

11:59:03 24 Q. This is the meeting where he ran up and hugged you

11:59:07 25 according to you?

11:59:08 1 MR. KULWIN: Objection.

11:59:08 2 THE COURT: Overruled.

11:59:09 3 THE WITNESS: He did.

11:59:10 4 BY MR. LOEVY:

11:59:10 5 Q. All right. So he was not denying that he didn't see these

11:59:13 6 men before he heard the shots, nor that he doesn't know who

11:59:16 7 they were?

11:59:16 8 MR. KULWIN: Objection, argumentative.

11:59:18 9 THE COURT: Sustained. It's been covered

11:59:19 10 sufficiently at this point.

11:59:21 11 BY MR. LOEVY:

11:59:22 12 Q. He also told you a long time after the shooting

11:59:24 13 O'Callaghan showed me four photographs to see if I could

11:59:28 14 identify anyone. He told you that at the meeting, didn't he?

11:59:31 15 MR. KULWIN: Objection, argumentative.

11:59:32 16 THE COURT: Overruled. That's not an argumentative

11:59:36 17 question.

11:59:36 18 THE WITNESS: He did not. This is their document

11:59:39 19 that they typed up.

11:59:40 20 BY MR. LOEVY:

11:59:52 21 Q. The state's attorneys also documented a reason why Gerald,

11:59:59 22 they claimed Gerald signed the affidavit, correct?

12:00:02 23 A. Are we going back to possible Prawiec's report?

12:00:07 24 Q. Yes. It says Gerald said he signed the piece of paper

12:00:10 25 without really reading it because he just wanted them to

12:00:13 1 leave. That's what the state's attorney wrote down as the
12:00:15 2 reason he notarized this affidavit, right?

12:00:17 3 A. The investigator wrote that, not the state's attorney.

12:00:19 4 Q. Now, my question is based on your interactions with
12:00:22 5 Gerald, was he the kind of guy that would sign a sworn
12:00:25 6 statement just because he wanted people to leave him alone?

12:00:29 7 MR. KULWIN: Objection, calls for speculation.

12:00:30 8 THE COURT: Overruled.

12:00:31 9 THE WITNESS: In this instance, yes.

12:00:35 10 BY MR. LOEVY:

12:00:37 11 Q. He was -- this is the guy we described as weak and timid
12:00:41 12 and mild, right?

12:00:41 13 MR. KULWIN: Objection, asked and answered.

12:00:42 14 THE COURT: Overruled.

12:00:44 15 THE WITNESS: This is a guy I used as part of my
12:00:48 16 description of Gerald.

12:00:48 17 BY MR. LOEVY:

12:00:49 18 Q. Let take a look at Plaintiff's Exhibit 219 E. This is a
12:00:53 19 photograph of Gerald's window, is it not?

12:00:55 20 A.

12:01:01 21 THE COURT: You mean the one that's circled up there?

12:01:03 22 MR. LOEVY: Yes, your Honor, I'll represent that
12:01:06 23 circle was created at the criminal trial. It's state's 15.

12:01:11 24 THE COURT: Do you know if that's a photo of the
12:01:13 25 window?

12:01:14 1 THE WITNESS: I don't.

12:01:15 2 BY MR. LOEVY:

12:01:16 3 Q. Showing you 219 F, this also has a window circled, right?

12:01:23 4 THE COURT: Well, more like a square.

12:01:26 5 BY MR. LOEVY:

12:01:26 6 Q. A square?

12:01:26 7 A. I see the markings, yeah.

12:01:29 8 Q. Showing you the building, do you see this part jutting out
12:01:36 9 on the middle of the south part of the building?

12:01:38 10 A. That would be the north part of the building.

12:01:40 11 Q. I'm sorry, north part, you're exactly right.

12:01:43 12 A. Okay.

12:01:44 13 Q. If you look at those photographs, Gerald's window is on
12:01:47 14 the north part of this jutting out part?

12:01:50 15 MR. KULWIN: Judge, can I see that?

12:01:51 16 THE COURT: Point it out.

12:01:53 17 BY MR. LOEVY:

12:01:54 18 Q. Here is the jutting out part?

12:01:55 19 THE COURT: Okay.

12:01:55 20 BY MR. LOEVY:

12:01:56 21 Q. Would you agree based on the photographs that this is the
12:02:00 22 building -- this is more of the building here, this is where
12:02:04 23 it goes straightaway, this is the jutting out part of the
12:02:06 24 building?

12:02:07 25 A. I'll agree that's the jutting part of the building.

12:02:10 1 Q. All right. Then if Gerald's window was in fact on the
12:02:15 2 north end of the jutting out part, there is no way he could
12:02:17 3 have seen a car in the southwest corner, would you agree with
12:02:21 4 that?

12:02:21 5 MR. KULWIN: Objection, argumentative.

12:02:22 6 THE COURT: Overruled.

12:02:23 7 BY MR. LOEVY:

12:02:25 8 Q. Physically impossible?

12:02:25 9 A. If the car was there, I am going to assume that you're
12:02:29 10 showing the right apartment, that car was not on the very
12:02:34 11 southwest corner in my opinion. In my opinion, I think the
12:02:38 12 car was in a different position.

12:02:39 13 Q. You weren't there, right, during the shooting, you don't
12:02:42 14 know where the car was?

12:02:44 15 MR. KULWIN: Objection.

12:02:45 16 THE COURT: You can answer.

12:02:46 17 THE WITNESS: I wasn't at the shooting scene, no.

12:02:48 18 BY MR. LOEVY:

12:02:48 19 Q. If the car was where Randy Langston described it
12:02:51 20 yesterday, then it would be physically impossible for Randy
12:02:54 21 Morris to see the car?

12:02:55 22 MR. KULWIN: Objection, argumentative, Judge.

12:02:57 23 THE COURT: Overruled.

12:02:58 24 THE WITNESS: Gerald Morris.

12:03:00 25 BY MR. LOEVY:

12:03:00 1 Q. Yes.

12:03:01 2 A. I'm assuming -- here, if you showed things up by the front
12:03:08 3 of the building, no, in the back of the building, yes.

12:03:10 4 Q. Where do you believe the car was, sir?

12:03:13 5 A. I would believe from everybody in a compilation again, in
12:03:20 6 a compilation, I believe, that the car is.

12:03:23 7 THE COURT: I tell you what, let me hold it.

12:03:28 8 THE WITNESS: Here's the front of '706, I believe the
12:03:34 9 car would have been either right in this slot or right out
12:03:39 10 onto street because they had to make it through the tunnel to
12:03:44 11 get to the car and then out, so if you want me to answer on
12:03:49 12 Randy Langston or no?

12:03:51 13 BY MR. LOEY:

12:03:52 14 Q. The path you just described, people in front of the
12:03:57 15 building at the baseball field, they would not have had a view
12:04:01 16 of the car where you described it, would you agree?

12:04:03 17 A. No, I wouldn't.

12:04:04 18 Q. You think someone standing anywhere on the ball field, I
12:04:08 19 will put you on any corner you want, would have been able to
12:04:11 20 make out a get away driver from the car where you just
12:04:15 21 described it behind the building?

12:04:16 22 A. First a double question. First is could they observe the
12:04:19 23 car fleeing, second, they did not make out the get away
12:04:23 24 driver, nobody could make out that get away driver.

12:04:25 25 Q. Randy testified that he saw the man in the car, did he

12:04:29 1 not?

12:04:29 2 A. He did not see the get away driver.

12:04:34 3 Q. Passenger, passenger?

12:04:36 4 A. Okay.

12:04:36 5 Q. Passenger.

12:04:38 6 A. Yes.

12:04:39 7 Q. All right. But that's physically impossible, is it not?

12:04:42 8 A. No.

12:04:42 9 Q. All right. When Gerald -- when you guys wanted Gerald to

12:04:47 10 come back to Chicago and testify, you described with Mr.

12:04:50 11 Kulwin the trip you took to go get him, correct?

12:04:53 12 A. I'm sorry. Which trip and when?

12:04:55 13 Q. When it was time for Mr. Fields' criminal retrial, you

12:04:58 14 guys needed Gerald Morris's testimony, correct?

12:05:01 15 A. Tell me what we're talking about Milwaukee again?

12:05:07 16 Q. No. Before the criminal retrial, you were retired in

12:05:10 17 2005, right?

12:05:11 18 A. 2009, yeah, I retired June of 2005.

12:05:17 19 Q. And you came out of retirement to make a trip to go get

12:05:20 20 Gerald in Missouri, right?

12:05:21 21 A. I never came out of retirement, no.

12:05:25 22 Q. All right. In 2009, you went to Missouri to go get

12:05:28 23 Gerald?

12:05:28 24 THE COURT: Just get to the question, please.

12:05:30 25 MR. LOEVY: That was the question.

12:05:31 1 THE COURT: Honestly, all this background has been
12:05:32 2 covered more than sufficiently during the direct examination.

12:05:35 3 BY MR. LOEVY:

12:05:39 4 Q. And this was -- this was the trip for our time frame when
12:05:41 5 he got held out of work and got fired?

12:05:44 6 MR. KULWIN: Judge.

12:05:45 7 THE COURT: Get to the question. That's what I said.
12:05:47 8 You covered what you just talked about more than sufficiently
12:05:50 9 during the direct examination. I am now saying that for the
12:05:53 10 second time. There will not be a third.

12:05:54 11 BY MR. LOEVY:

12:05:55 12 Q. Did he agree to come without a subpoena, voluntarily?

12:06:00 13 A. I don't know. I doubt it. Otherwise, we wouldn't be
12:06:07 14 subpoenaing him.

12:06:08 15 Q. All right. Let's talk about you were asked some questions
12:06:12 16 by Mr. Kulwin about whether you were trying to make a case
12:06:15 17 against Mr. Fields. It was important for the task force to
12:06:17 18 succeed to get convictions, correct?

12:06:19 19 A. It's important for the task force to follow their leads
12:06:25 20 and do their job.

12:06:25 21 Q. And you wanted to get convictions, correct?

12:06:28 22 A. Eventually, of course, if you do your job, you're hoping
12:06:33 23 that it results in a proper conviction.

12:06:36 24 Q. All right. I am going to show you Plaintiff's Exhibit
12:06:39 25 109, page 4. This is something Mr. Kulwin showed you. This

12:06:43 1 is something Mr. Kulwin showed you this morning.

12:06:45 2 A. Okay. We are back to the --

12:06:47 3 Q. Back to Vaughn/White?

12:06:49 4 A. Okay.

12:06:49 5 Q. The state's attorney asked Sheree why she was not saying

12:06:53 6 Pumpkin was one of the offenders and she responded she is

12:06:56 7 afraid for her safety and that of her brother so she didn't

12:06:59 8 want to identify him. The state's attorney asked why she's

12:07:01 9 able to make the identification now, and she related that she

12:07:04 10 wants the offenders punished for what they did to her mother

12:07:07 11 and Joe. Do you see that, sir?

12:07:08 12 A. You are reading correctly.

12:07:09 13 Q. What was going on there was Sheree had not originally

12:07:12 14 identified Pumpkin but then later after the state's attorney

12:07:17 15 wouldn't approve charges, they went back to her and then she

12:07:20 16 identify Pumpkin?

12:07:22 17 MR. KULWIN: I object, Judge, closing argument. It's

12:07:25 18 argumentative.

12:07:25 19 THE COURT: Overruled.

12:07:26 20 THE WITNESS: I wasn't part of this, and apparently

12:07:28 21 you're correct.

12:07:28 22 BY MR. LOEVY:

12:07:29 23 Q. All right. So isn't it true that when the state's

12:07:33 24 attorney inserted was an excuse that she hadn't made the

12:07:37 25 identification because she was afraid for her safety?

12:07:39 1 MR. KULWIN: Objection.

12:07:40 2 THE COURT: The objection is sustained.

12:07:41 3 BY MR. LOEVY:

12:07:41 4 Q. That was not an uncommon explanation for why witnesses
12:07:45 5 were changing their stories, was it?

12:07:47 6 MR. KULWIN: Objection, Judge.

12:07:48 7 THE COURT: Sustained.

12:07:49 8 BY MR. LOEVY:

12:07:55 9 Q. All right. You were asked about whether you were excluded
12:07:58 10 from court this morning, Mr. Kulwin asked you those questions.
12:08:01 11 And you said you had no participation in shaping the
12:08:05 12 prosecutor's theory.

12:08:07 13 May I have the permanent retention file back?

12:08:10 14 THE COURT: Yes, it's right up here.

12:08:12 15 MR. LOEVY: Thank you.

12:08:12 16 BY MR. LOEVY:

12:08:13 17 Q. The prosecutors when they put the trial on of Mr. Fields,
12:08:17 18 they used your police reports basically for the script of the
12:08:20 19 trial, right?

12:08:22 20 MR. KULWIN: Objection, Judge. How he knows.

12:08:24 21 THE COURT: Sustained.

12:08:25 22 BY MR. LOEVY:

12:08:25 23 Q. Do you know at trial what theory the state put on at Mr.
12:08:31 24 Fields' trial?

12:08:31 25 A. In 2009?

12:08:33 1 Q. Yeah, and in 2006.

12:08:35 2 A. Now I do. I did not before.

12:08:37 3 Q. I'm sorry. In '86 what they did was they put on Randy
12:08:42 4 Langston, they put on Gerald Morris, and they put on through
12:08:45 5 you Eric Langston saying that they identified Mr. Fields
12:08:50 6 commit the murder, right?

12:08:51 7 A. We are back to 86?

12:08:53 8 Q. Yes.

12:08:54 9 A. I believe those people testified.

12:08:56 10 Q. And that's how the system works, the state's attorneys
12:09:00 11 take the police reports, they look at the investigation, and
12:09:04 12 then they try to prove it in court, right?

12:09:06 13 MR. KULWIN: Objection, Judge. He is not an expert
12:09:09 14 on how the state's attorney works.

12:09:12 15 MR. LOEVY: He was this morning.

12:09:17 16 THE WITNESS: They completed it, then the rest of the
12:09:20 17 investigation, could be completed by their office. A
12:09:22 18 compilation of people doing their work, yes.

12:09:25 19 BY MR. LOEVY:

12:09:25 20 Q. You were asked about whether you were cross-examined by at
12:09:29 21 the criminal trial. Do you remember Mr. Kulwin asking you
12:09:32 22 that?

12:09:32 23 A. The 198 of one?

12:09:34 24 Q. Yes.

12:09:35 25 A. Yes.

12:09:35 1 Q. You can't cross-examine somebody if you don't have their
12:09:38 2 notes?

12:09:38 3 MR. KULWIN: Objection.

12:09:39 4 THE COURT: Overruled. You can ask the question.

12:09:43 5 BY MR. LOEVY:

12:09:44 6 Q. To cross-examine someone effectively you need their notes,
12:09:47 7 right?

12:09:48 8 A. Are you talking about my notes?

12:09:49 9 Q. Yes.

12:09:52 10 A. I'm sorry. They had my report. I was cross-examined to
12:09:54 11 the best of my memory on the lineups and the identification
12:09:57 12 procedures.

12:09:57 13 Q. All right. You told Mr. Kulwin that you believed these
12:10:00 14 area files were produced to Mr. Fields. Do you remember
12:10:03 15 testifying to that this morning?

12:10:04 16 A. I believe I testified that there's a system in which files
12:10:11 17 are sent over and I didn't do it.

12:10:13 18 Q. I thought specifically Mr. Kulwin asked you, isn't it true
12:10:17 19 you know that the area file would the lineup report scratch
12:10:20 20 out was produced to Mr. Fields and you said yes, didn't you?

12:10:23 21 A. I believe that's part of the grouping. I believe you're
12:10:27 22 right.

12:10:27 23 Q. But really what the accurate thing to say is that is just
12:10:30 24 a wild guess on your part, correct?

12:10:31 25 A. No.

12:10:32 1 Q. Isn't it true the area file didn't show up until this
12:10:35 2 litigation even after the street file in 2011?

12:10:38 3 A. No.

12:10:40 4 Q. How do you know, sir? Where was the area file? I'll ask
12:10:44 5 the latter question, your Honor.

12:10:45 6 Where was the area file?

12:10:47 7 A. You are separating files here, correct?

12:10:51 8 Q. Sir, I am asking you about the area file?

12:10:53 9 A. My answer is the area file would be the file that was in
12:10:58 10 the area office in downtown. Anyway, that area file with all
12:11:05 11 the key reports and stuff was turned over. That's my
12:11:10 12 recollection.

12:11:10 13 Q. You were asked if you showed Andrew's photo to anybody and
12:11:19 14 your memory was that you did, Hank Andrews?

12:11:21 15 A. Andrews was in that stack also of 20 to 25, yes.

12:11:25 16 Q. Other than your memory, do you have any proof or evidence
12:11:28 17 that Andrews's photo was shown to anybody, do you understand
12:11:31 18 the question?

12:11:32 19 MR. KULWIN: Asked and answered.

12:11:33 20 THE COURT: You have covered sufficiently what
12:11:34 21 evidence there is regarding what was in the stack of photos.
12:11:36 22 The objection is sustained.

12:11:38 23 BY MR. LOEVY:

12:11:43 24 Q. You said that the reason you took that photo of Mr. Fields
12:11:45 25 was in case he tried to come to court and have a suit and

12:11:48 1 you'd have a tattoo -- you'd have a photo of his tattoo?

12:11:51 2 A. We are talking about the gang tattoo, correct.

12:11:54 3 Q. Your answer was in case he tried to show up in court and

12:11:59 4 put a on a suit and act like a nice person?

12:12:03 5 A. That would be my purpose, yes.

12:12:04 6 Q. Did he not have a right to put on a suit?

12:12:06 7 MR. KULWIN: Objection, Judge. Argumentative.

12:12:07 8 THE COURT: Overruled.

12:12:09 9 THE WITNESS: Did he not have the right to put on a

12:12:11 10 suit?

12:12:11 11 BY MR. LOEVY:

12:12:12 12 Q. Did you want him to come to court with an El Rukn T-shirt?

12:12:16 13 A. I don't care he comes to court.

12:12:17 14 Q. You wore a suit, didn't you, sir?

12:12:20 15 A. I did.

12:12:20 16 Q. And he had a right to wear a suit, too, didn't he?

12:12:23 17 A. That's fine too.

12:12:24 18 Q. All right. You said the state's attorney approved the

12:12:29 19 charges but you represented to the state's attorney that these

12:12:31 20 identifications were legit, didn't you?

12:12:33 21 A. Yes, I did.

12:12:35 22 Q. And the state's attorney relied on your representation,

12:12:38 23 didn't he?

12:12:38 24 A. I would say that's in his consideration, yes.

12:12:43 25 Q. You told Mr. Kulwin that you went to look for Mr. Fields

12:12:48 1 from May 18th to June 10th and remember he asked you all those
12:12:54 2 date ranges? Do you remember his questioning?
12:12:58 3 A. Yes, I remember that.
12:12:59 4 Q. Do you have any proof that you ever went to see Nate
12:13:01 5 Fields looking for him, any proof?
12:13:03 6 A. Proof?
12:13:04 7 Q. Yes?
12:13:04 8 A. Did I document every visit, no.
12:13:09 9 Q. Sir, the question is do you have any proof?
12:13:11 10 A. No, I am not going to say I can sit here and produce
12:13:16 11 proof, dates, times, I went there and other went there.
12:13:20 12 Q. All right. Do you have any -- all right. The lineup
12:13:23 13 room. You were not in the room with the witnesses, is that my
12:13:27 14 understanding of what you told Mr. Kulwin?
12:13:29 15 A. You are mistaken totally.
12:13:31 16 Q. Which witness room were you in with the witnesses or with
12:13:35 17 the suspects?
12:13:35 18 A. Witnesses, behind the wall as I said ten times.
12:13:38 19 Q. So the people that were looking at the lineup, they are
12:13:40 20 interacting with you, right?
12:13:42 21 A. Yes.
12:13:42 22 Q. All right. This tentative identification that you
12:13:50 23 described you showed the photos and they said it could be the
12:13:55 24 guy, right?
12:13:56 25 MR. KULWIN: Judge, page?

12:13:58 1 MR. LOEVY: All the tentative identifications.

12:14:01 2 MR. KULWIN: It wasn't -- lack of foundation.

12:14:04 3 THE COURT: You're referring to the identifications
12:14:07 4 where a particular person said this might be the person, it
12:14:10 5 looked like the person.

12:14:12 6 MR. LOEVY: Exactly.

12:14:12 7 THE COURT: That's what he's referring to. Go ahead
12:14:15 8 and ask the question.

12:14:16 9 BY MR. LOEVY:

12:14:16 10 Q. If some people tentatively, say they tentatively
12:14:20 11 identified Earl Hawkins?

12:14:21 12 MR. KULWIN: I am going to object. These are not the
12:14:23 13 photos. This is a lineup question. He knows it's not right.

12:14:26 14 MR. LOEVY: It's a question.

12:14:27 15 MR. KULWIN: Sorry.

12:14:27 16 THE COURT: Overruled.

12:14:28 17 BY MR. LOEVY:

12:14:29 18 Q. Let's say hypothetically someone said, all right, this
12:14:32 19 could be the guy on the left. Okay? Are you saying they're
12:14:36 20 also saying it couldn't be this guy?

12:14:38 21 A. To a hypothetical here, not what occurred. The answer is
12:14:45 22 hypothetically, this is a photo lineup, I know what occurred
12:14:53 23 in this lineup and it was a positive identification, so that's
12:14:57 24 -- I don't know what else I can say.

12:14:58 25 Q. Let me ask you about a few more subjects.

12:15:05 1 You asked Mr. Kulwin -- you were asked by Mr. Kulwin
12:15:09 2 about?

12:15:13 3 THE COURT: Execution me. Go ahead.

12:15:14 4 BY MR. LOEVY:

12:15:15 5 Q. That you heard from five El Rukns about information about
12:15:18 6 Mr. Fields, correct? Do you remember that question?

12:15:20 7 A. Did we use a specific number?

12:15:26 8 Q. I said five.

12:15:27 9 A. Okay.

12:15:28 10 Q. Two of them were Anthony Sumner and Earl Hawkins, correct?

12:15:32 11 A. Yes.

12:15:35 12 Q. And the other three are the three that your counsel and I
12:15:38 13 talked about in opening statement, correct?

12:15:39 14 A. Yes.

12:15:42 15 Q. And they're going to testify in this trial, correct?

12:15:44 16 A. I don't know who is going to testify for sure or not.

12:15:48 17 Q. All right. Let's talk about Earl Hawkins. You told us --
12:15:57 18 and I am going to bring your attention back to the parole

12:16:00 19 letter you wrote for Earl. Do you remember what we are
12:16:02 20 talking about there?

12:16:03 21 MR. KULWIN: Judge, this is outside the scope of
12:16:05 22 cross. I didn't go into this at all.

12:16:08 23 THE COURT: Sustained.

12:16:09 24 BY MR. LOEVY:

12:16:09 25 Q. You told Mr. Kulwin that you do not make promises to

12:16:12 1 witnesses, didn't you tell him that multiple times?

12:16:14 2 A. Did I answer the question that way, yes.

12:16:19 3 Q. Yes.

12:16:21 4 And that's important to you never to make a promise
12:16:23 5 to a witness, right?

12:16:24 6 A. We are talking about promises that I can't make to a
12:16:29 7 witness such as what a judge will decide.

12:16:32 8 Q. All right. If you don't make promises to witnesses, why
12:16:35 9 did you make a solemn promise to Earl Hawkins that you were
12:16:39 10 going to give him consideration if he ever came up for parole?

12:16:44 11 A. We are playing semantics. If I made a promise to Earl
12:16:52 12 Hawkins, I made a promise to Earl Hawkins that at any time it
12:16:56 13 became necessary, I would speak before a judge, either a state
12:17:00 14 court judge or a federal judge or any other body such as a
12:17:04 15 parole board or other as to the extent of his cooperation,
12:17:11 16 but.

12:17:11 17 Q. That was a promise then, right?

12:17:12 18 A. Yeah.

12:17:12 19 Q. A solemn promise?

12:17:14 20 A. I would consider I gave my word on that, yes.

12:17:18 21 Q. Why didn't you write a letter to the parole board in 1999
12:17:22 22 the first time early came up?

12:17:25 23 A. I don't know if I did. Are you saying there was one? I
12:17:27 24 don't know that that existed.

12:17:28 25 Q. Why didn't you write a letter to the parole board in 2001?

12:17:31 1 A. I didn't know he had a parole hearing in those years.

12:17:34 2 Q. He had a parole hearing in 2003, 2004, 2007, and 2009?

12:17:38 3 MR. KULWIN: Lay a foundation that he knows that.

12:17:41 4 BY MR. LOEVY:

12:17:42 5 Q. Plaintiff 212, your Honor, is Mr. Hawkins' parole records?

12:17:46 6 THE COURT: Just ask the question. I think you have
12:17:49 7 made the point.

12:17:50 8 BY MR. LOEVY:

12:17:50 9 Q. The first and only time you wrote a letter for Earl
12:17:53 10 Hawkins was two and a half months after he provided testimony
12:17:56 11 that was favorable to you in the hearing in this case,
12:17:58 12 correct?

12:17:59 13 A. After he testified here, yes.

12:18:01 14 Q. How did you learn that he was having a parole hearing two
12:18:05 15 and a half months after he testified in your case?

12:18:07 16 A. I was notified.

12:18:09 17 Q. Who notified you, sir?

12:18:11 18 A. The U.S. Attorney's Office.

12:18:13 19 Q. Had they notified you in 2011, 2012, 2009?

12:18:18 20 A. I don't believe so.

12:18:21 21 Q. What were the circumstances where the U.S. Attorney's
12:18:24 22 Office was telling you two and a half months --

12:18:27 23 THE COURT: Ask a more focused question.

12:18:30 24 BY MR. LOEVY:

12:18:31 25 Q. What were the circumstances that the U.S. Attorney's

12:18:33 1 Office was telling you a parole hearing was coming up?

12:18:36 2 THE COURT: You need to ask a more focused question.

12:18:39 3 What were the circumstances, even I don't understand.

12:18:41 4 BY MR. LOEVY:

12:18:41 5 Q. Is it a coincidence or is it not a coincidence that he

12:18:44 6 provides the testimony, you write a letter?

12:18:45 7 A. It's not a coincidence.

12:18:47 8 Q. It's not a coincidence?

12:18:48 9 A. I don't believe so. I believe it stems back from 1988,

12:18:52 10 and I was asked to do so and I did so to keep my word back

12:18:55 11 from '88, 89.

12:19:01 12 MR. LOEVY: I have no further questions, your Honor.

12:19:03 13 THE COURT: Mr. Kulwin.

12:19:06 14 - - -

12:19:06 15 DAVID O'CALLAGHAN, RECROSS-EXAMINATION

12:19:06 16 BY MR. KULWIN:

12:19:16 17 Q. Let start, Dave. Mr. Loevy just asked you a bunch of

12:19:19 18 questions about how the only witness that you found in your 85

12:19:22 19 investigation that wasn't in '84 was Gerald Morris. Do you

12:19:25 20 remember that question?

12:19:26 21 A. I do.

12:19:27 22 Q. That's false, isn't it?

12:19:29 23 MR. LOEVY: Your Honor, it was a question.

12:19:32 24 MR. KULWIN: It was a --

12:19:34 25 THE COURT: I need to see you at sidebar.

12:19:36 1 (The following proceedings were had at sidebar outside the
12:19:41 2 hearing of the jury:)

12:19:41 3 THE COURT: Okay. Everybody and I expect you to pass
12:19:50 4 this onto your fellow people on your teams is now on notice
12:19:55 5 that you are going to get one, one more improper statement in
12:20:03 6 front of the jury and then I am going to start imposing
12:20:06 7 penalties, monetary penalties. I am going to strike your
12:20:09 8 comment. You are not supposed to do that. It's incorrect. I
12:20:12 9 am going to instruct the jury that it's incorrect because it
12:20:14 10 is. It was a question. And it's stricken and so that's your
12:20:18 11 first one. That's your first one.

12:20:23 12 (The following proceedings were had in open court in the
12:20:24 13 presence and hearing of the jury:)

12:20:24 14 THE COURT: Okay. You heard me during the trial tell
12:20:26 15 the lawyers make objections, ask questions, don't make
12:20:30 16 comments except when it's opening and closing. What was just
12:20:33 17 done there was a comment. It's improper, it's stricken. I
12:20:37 18 warned the lawyers at sidebar that that is to stop
12:20:40 19 immediately. So now ask a question.

12:20:43 20 BY MR. KULWIN:

12:20:45 21 Q. Dave, was Gerald Morris the only person or was Torrence
12:20:50 22 White another?

12:20:51 23 A. Was Torrence White new?

12:20:54 24 Q. Yes.

12:20:55 25 A. Yes.

12:20:55 1 Q. Okay. And what evidence did Torrence White ultimately
12:21:00 2 provide in your investigation with respect to Earl Hawkins and
12:21:04 3 Nathson Fields, what did he ultimately provide?

12:21:06 4 A. He ultimately provided that he was unable to make an
12:21:13 5 identification, but he made a little statement in there too.

12:21:17 6 Q. Okay. So you found a new witness that went against the
12:21:22 7 entire theory?

12:21:23 8 MR. LOEVY: Objection, leading, your Honor.

12:21:24 9 THE COURT: Overruled.

12:21:26 10 BY MR. KULWIN:

12:21:26 11 Q. The entire theory Mr. Sumner had provided, do I understand
12:21:30 12 that correct? Isn't that true?

12:21:34 13 A. Yes.

12:21:34 14 Q. Now, you were asked some questions about why you put
12:21:42 15 cuffs on people when you're doing an investigation. Do you
12:21:45 16 remember that?

12:21:45 17 A. Yes.

12:21:46 18 Q. Let's be crystal clear, it had nothing to do with trying
12:21:51 19 to force people to give testimony; is that correct?

12:21:54 20 MR. LOEVY: Objection, leading, your Honor.

12:21:55 21 THE COURT: Overruled.

12:21:56 22 BY MR. KULWIN:

12:21:57 23 Q. ; is that correct?

12:21:57 24 A. That is absolutely correct.

12:21:58 25 Q. Tell the jury why, although I think they know, tell the

12:22:01 1 jury why you would ever in an investigation put cuffs on a
12:22:06 2 witness, potential witness. Go ahead.
12:22:09 3 A. I'm answering?
12:22:10 4 Q. You're answering.
12:22:15 5 A. As I think I kind of stated already, it would be a tactic
12:22:19 6 even with an informant, my known informants that I would roll
12:22:23 7 up on them, cuff them, drag them off the street to a safe
12:22:26 8 place, and therefore protect the fact that they're cooperating
12:22:31 9 with me or giving information, so it's for their safety. It's
12:22:37 10 like a big show out in the street, all the eyes are on you.
12:22:41 11 Q. Okay. You were asked a series -- and when you did that,
12:22:47 12 the witness, the potential witness wanted you to do that to
12:22:50 13 protect them, do I understand you correctly?
12:22:53 14 THE COURT: The objection to leading is sustained.
12:22:55 15 BY MR. KULWIN:
12:22:56 16 Q. Let's go to defendants' Exhibit 181. You were asked a
12:23:01 17 number of questions?
12:23:02 18 THE COURT: You might want to zoom that out a little
12:23:04 19 bit.
12:23:05 20 MR. KULWIN: Sorry, Judge. Thank you.
12:23:09 21 BY MR. KULWIN:
12:23:12 22 Q. You were asked a number of questions about what Gerald
12:23:17 23 Morris said up in 1999. The first thing I got to ask you,
12:23:24 24 were asked why didn't you get Gerald to sign an affidavit to
12:23:27 25 lock him in. Do you remember that question?

12:23:29 1 A. Yes, it was 2000.

12:23:31 2 Q. 2000. You were asked that.

12:23:32 3 When you're confident that a witness is telling you
12:23:38 4 the truth and is going to keep telling him the truth, do you
12:23:41 5 need to lock him in with an affidavit?

12:23:42 6 A. No.

12:23:43 7 Q. Did Gerald Morris years later after you didn't lock him in
12:23:48 8 walk into a courthouse at 26th and California, raise his hand
12:23:53 9 and swear under oath that Nathson Fields was the killer?

12:23:56 10 A. I believe you're correct.

12:23:58 11 Q. Did you do anything in 2001, 2, 3, 4, 5, 6, 7, 8 to get
12:24:05 12 Gerald Morris to stick with his story?

12:24:06 13 A. No, I really didn't even know where Gerald was then.

12:24:11 14 Q. Now, you were asked some questions about, gosh, the
12:24:18 15 purpose of writing every little note down is so the criminal
12:24:22 16 defense attorney can cross-examine you at the trial about your
12:24:26 17 investigation. Do you remember that, do you remember those
12:24:30 18 questions?

12:24:30 19 A. I do.

12:24:31 20 Q. In this very case, in this very criminal case, 1986, with
12:24:37 21 all the police reports, did Nathson Fields' attorney ever get
12:24:41 22 up to cross-examine you about anything?

12:24:43 23 MR. LOEVY: Objection, asked and answered on the
12:24:45 24 first.

12:24:49 25 THE COURT: Sustained.

12:24:49 1 BY MR. KULWIN:

12:24:50 2 Q. Did he need notes to cross-examine you when you have
12:24:56 3 police reports to say exactly what you did? You can answer
12:24:59 4 it.

12:24:59 5 A. No, I don't believe so.

12:25:01 6 Q. You were asked some questions about -- you were asked some
12:25:10 7 questions about whether the protocol at the meeting in
12:25:14 8 Milwaukee was that Gerald was supposed to underline what
12:25:17 9 wasn't true. Do you remember that -- those questions? Do you
12:25:21 10 remember the questions?

12:25:21 11 A. Yes.

12:25:22 12 Q. Okay. But it really says, though, what it says is that
12:25:28 13 Gerald was then asked to underline those parts of the
12:25:31 14 statements that he never told to the attorneys when he first
12:25:36 15 talked to them. Isn't that what it says?

12:25:39 16 A. Yes.

12:25:40 17 Q. It doesn't say anything about it's not true?

12:25:42 18 MR. LOEVY: Objection, your Honor.

12:25:44 19 THE COURT: Finish the question.

12:25:46 20 BY MR. KULWIN:

12:25:46 21 Q. It doesn't say anything about he is not underlying because
12:25:50 22 it's not true, does it?

12:25:54 23 THE COURT: The objection is overruled. You can
12:25:56 24 answer.

12:25:56 25 THE WITNESS: No, it does not.

12:25:57 1 BY MR. KULWIN:

12:26:04 2 Q. You were asked some questions about are you sure that you
12:26:08 3 were in the witness room during the lineups involving Mr.
12:26:11 4 Fields. Do you remember those questions?

12:26:12 5 A. Yes.

12:26:13 6 Q. Did anybody, to your knowledge, ever testify, anybody,
12:26:19 7 Gerald Morris, Randy Langston, Eric Langston, Eric Benson,
12:26:24 8 Carlos Willis, Torrence White that while they were viewing the
12:26:27 9 lineup of Nathson Fields, you were standing there picking his
12:26:31 10 shirt up to show the tattoo, are you aware of any of them?

12:26:34 11 MR. LOEVY: Objection, your Honor. I didn't ask
12:26:36 12 about the shirt and he covered this last time.

12:26:37 13 THE COURT: Sustained.

12:26:41 14 BY MR. KULWIN:

12:26:41 15 Q. Are you aware of any witness who saw you in the lineup
12:26:43 16 room with Nathson Fields?

12:26:45 17 MR. LOEVY: Beyond the scope.

12:26:46 18 THE COURT: Overruled.

12:26:48 19 THE WITNESS: They couldn't because I was in the room
12:26:53 20 with them.

12:26:53 21 BY MR. KULWIN:

12:26:54 22 Q. And are you aware of anyone saying that?

12:26:56 23 A. No.

12:26:56 24 Q. You were asked some questions about whether Mr. Fields has
12:26:59 25 a right to wear a suit at court. Do you remember those

12:27:02 1 questions?

12:27:02 2 A. Yes.

12:27:03 3 Q. Was your testimony about why you took the tattoo, somehow
12:27:07 4 you saying that criminal defendants don't have rights to wear
12:27:10 5 suits?

12:27:10 6 A. No.

12:27:11 7 Q. Explain to the jury why you take a picture of a tattoo and
12:27:16 8 how it relates to wearing a suit.

12:27:17 9 A. I take the tattoo or scars or other issues to prove that a
12:27:26 10 subject had such a tattoo or other markings at that time for
12:27:33 11 trial later.

12:27:34 12 Q. You were asked some questions about Inetta Watts and her
12:27:42 13 daughter. Do you remember those questions?

12:27:43 14 A. Yes.

12:27:44 15 Q. Okay. In the interview, does Ms. Watts give you the phone
12:27:51 16 number of her daughter as you recall?

12:27:55 17 A. No, I think she called her.

12:27:57 18 Q. She called her for you.

12:27:59 19 Where was her daughter?

12:28:00 20 A. Her daughter was somewhere out of state, I believe.

12:28:03 21 Q. What was the purpose of having her call her daughter, if
12:28:09 22 you recall?

12:28:09 23 A. I asked her to.

12:28:11 24 Q. Okay. And she said okay?

12:28:12 25 A. She did.

12:28:14 1 Q. Did you ever ultimately get any agreement from her
12:28:18 2 daughter to come and testify for anything?

12:28:20 3 A. No.

12:28:20 4 Q. When you were asked whether or not Ms. Watts was purposely
12:28:25 5 jeopardizing her daughter's safety by giving you her phone
12:28:29 6 number, is that what you understood Ms. Watts to be doing?

12:28:32 7 A. No.

12:28:33 8 Q. What did you understand her to be doing?

12:28:34 9 A. I understand Ms. Watts to possibly be giving me a second
12:28:42 10 lead that may be feasible.

12:28:44 11 Q. That Ms. Watts' daughter might know something about who
12:28:47 12 killed the people, not that she's going to volunteer to be a
12:28:50 13 witness, do I understand that correctly?

12:28:52 14 MR. LOEVY: Objection, leading.

12:28:53 15 THE COURT: Sustained.

12:28:54 16 MR. KULWIN: If I may have a moment, Judge.

12:29:24 17 THE COURT: Yes.

12:29:25 18 (Brief pause.)

12:29:50 19 BY MR. KULWIN:

12:29:50 20 Q. Mr. Loevy, do you still have that Plaintiff's Exhibit 86
12:29:53 21 up there?

12:29:54 22 A. That's the Bob Prawiec report?

12:29:56 23 Q. No, no, no, no. That's the full police report?

12:29:58 24 A. The stack of all reports.

12:30:01 25 Q. Do you have the stack?

12:30:02 1 A. Sure.

12:30:02 2 Q. Last point. Real quick. I think you have mine actually;
12:30:06 3 yeah, you've got yours. That one.

12:30:09 4 Mr. Loevy asked you some questions about your
12:30:14 5 interview with James Langston. Do you remember those
12:30:16 6 questions? Do you remember him asking --

12:30:20 7 THE COURT: Just ask the question, please.

12:30:22 8 THE WITNESS: The answer --

12:30:23 9 BY MR. KULWIN:

12:30:24 10 Q. Mr. O'Callaghan?

12:30:24 11 A. He asked me those questions.

12:30:26 12 Q. Okay. You never interviewed James Langston, did you?

12:30:29 13 A. You're correct.

12:30:30 14 Q. James Langston was interviewed in 1984?

12:30:35 15 A. Correct.

12:30:35 16 Q. That's what the police reports reflect, right?

12:30:38 17 A. Correct.

12:30:38 18 Q. And if I can have that back for a second.

12:30:43 19 And what James Langston?

12:30:57 20 MR. LOEVY: Objection to relevance and scope, your
12:30:59 21 Honor.

12:30:59 22 THE COURT: When I hear the question, I'll decide
12:31:03 23 whether to sustain it.

12:31:06 24 BY MR. KULWIN:

12:31:17 25 Q. What James Langston said at the time in 1984 was that he

12:31:22 1 heard six shots, saw a man wearing a ski mask and then rolled
12:31:30 2 it up over his face as he ran through the breezeway?

12:31:33 3 THE COURT: The objection is sustained. Rule 403.

12:31:35 4 BY MR. KULWIN:

12:31:45 5 Q. You were asked a series of questions about did you put
12:31:49 6 your opinions or theories or anything like that in your police
12:31:53 7 reports by writing notes. Do you remember those questions?

12:31:55 8 MR. LOEVY: Objection, asked and answered.

12:31:56 9 THE COURT: Just ask a question, please.

12:31:56 10 BY MR. KULWIN:

12:31:59 11 Q. Sir, is it proper for police officers to write theories
12:32:01 12 and opinions in their police reports about what they think of
12:32:04 13 the witnesses?

12:32:05 14 MR. LOEVY: Objection, your Honor. It's been
12:32:06 15 covered.

12:32:06 16 THE COURT: Overruled. It's a yes or no question.

12:32:11 17 BY MR. KULWIN:

12:32:11 18 Q. Yes or no?

12:32:12 19 A. No.

12:32:16 20 THE COURT: Anything non-repetitive?

12:32:18 21 MR. KULWIN: I have nothing.

12:32:19 22 THE COURT: Anything none repetitive.

12:32:21 23 MR. LOEVY: No.

12:32:21 24 THE COURT: One of the jurors already handed me. I
12:32:25 25 got that. I have a couple the lawyers can go over to sidebar.

12:32:55 1 Then we will break for lunch after we finish the juror
12:32:58 2 questions and whatever follow up is needed.

12:33:01 3 One thing I will tell you is that there is at least a
12:33:04 4 possibility that the cafeteria may be closed today. There was
12:33:09 5 some suggestion that they might close early. I did not get
12:33:12 6 any definitive word on that. My advice to you is if you are
12:33:17 7 going to the cafeteria, take your jacket with you so if the
12:33:20 8 cafeteria is closed, you can go straight outside and you don't
12:33:23 9 have to come back out.

12:33:38 10 (The following proceedings were had at sidebar outside the
12:34:32 11 hearing of the jury:)

12:34:32 12 THE COURT: Okay. What was final disposition on 1989
12:34:39 13 lawsuit against Detective O'Callaghan.

12:34:41 14 MR. LOEVY: It was dismissed, your Honor.

12:34:44 15 THE COURT: Is there a problem with that?

12:34:45 16 MR. LOEVY: No.

12:34:46 17 THE COURT: Okay. Is he going to know the answer?
12:34:49 18 Does he have any knowledge of the answer?

12:34:51 19 MR. KULWIN: No.

12:34:52 20 THE COURT: I am not going to ask it then. When did
12:34:54 21 you last work at area one detective group, any problem with
12:34:57 22 that?

12:34:58 23 MR. LOEVY: No.

12:34:58 24 THE COURT: Are you aware of any time information or
12:35:00 25 notes were intentionally withheld from a subpoena. That is no

12:35:04 1 way on God's green earth that I am ever going to ask that
12:35:08 2 question.

12:35:08 3 No.

12:35:09 4 How often are fillers picked in a lineup or rather
12:35:14 5 how often are known false IDs made in a lineup. I am loathe
12:35:18 6 to get into percentages. Does anybody have a problem with me
12:35:21 7 not asking that.

12:35:23 8 MR. LOEVY: No, your Honor.

12:35:23 9 THE COURT: Was Fields' photo shown to Inetta Watts
12:35:27 10 in '85.

12:35:29 11 MR. LOEVY: Yes.

12:35:30 12 THE COURT: That's the only one I am going to ask on
12:35:32 13 that page. There were actually -- one question this
12:35:35 14 handcuffing tactic, I got a smile when I read this, didn't
12:35:41 15 this tactic ever back fire since the people in the
12:35:43 16 neighborhood would eventually know that it's a tactic? That
12:35:46 17 is a pretty good question. Does anybody have a problem.

12:35:50 18 MR. KULWIN: No.

12:35:50 19 THE COURT: It is kind of a good enough question, he
12:35:53 20 ought to get it asked.

12:35:54 21 When something is changed on a police report,
12:35:57 22 specifically crossing out of the word identified is it
12:36:00 23 policies and practices that the person that crossed it out
12:36:02 24 should initial it.

12:36:05 25 MR. KULWIN: Relevance.

12:36:08 1 THE COURT: He may know from experience. Two
12:36:10 2 questions about that there were police reports that had your
12:36:13 3 signature, were there police reports of somebody else signing
12:36:15 4 your name, one said is that normal and allowed policies and
12:36:20 5 practices of the department, why would you allow somebody else
12:36:26 6 to sign your name to a report that you don't know about, I
12:36:28 7 think that's really the same question. Then there's did you
12:36:31 8 ever see the reports that have your name typed on it and which
12:36:34 9 you didn't sign, anybody have a problem with those?

12:36:36 10 MR. LOEVY: No.

12:36:37 11 MR. KULWIN: At what time.

12:36:39 12 THE COURT: Yeah, I'll fix it. I'll fix all of these
12:36:42 13 when I ask them.

12:36:43 14 These questions have to do with the traffic stop that
12:36:46 15 led to Mr. Fields' coming, getting arrested and brought in.
12:36:50 16 What was the traffic violation, who were the officers that
12:36:52 17 stopped him, were you aware of the violation, the nature of
12:36:56 18 the violation. Does anybody know the answers to those
12:36:58 19 questions? Speeding?

12:37:02 20 MR. KULWIN: There was an exhibit, speeding, it was a
12:37:07 21 patrol officer.

12:37:07 22 MR. LOEVY: Of all the random things to ask.

12:37:10 23 THE COURT: You see it all the time. I am going to
12:37:12 24 ask that then.

12:37:13 25 I'm okay to ask about what happened to the lawsuit.

12:37:17 1 MR. KULWIN: No.

12:37:18 2 THE COURT: No, I am not going to ask them.

12:37:24 3 (The following proceedings were had in open court in the
12:37:25 4 presence and hearing of the jury:)

12:37:25 5 THE COURT: Okay. So, again, for the jurors, I am
12:37:28 6 going to ask some but not all of the questions. Don't try to
12:37:33 7 speculate to the answers on questions I am not asking and I am
12:37:36 8 rephrasing some of them.

12:37:39 9 So let me just start in here.

12:37:41 10 So the first question has to do with the stack of
12:37:43 11 photos shown to Inetta Watts on May, I think it was May 20th
12:37:47 12 of 1985. Was there a photo of Mr. Fields in that stack?

12:37:51 13 THE WITNESS: Yeah, the date was different, but, yes.

12:37:54 14 THE COURT: The date is wrong.

12:37:55 15 THE WITNESS: Yes.

12:37:56 16 THE COURT: Whenever it was --

12:37:57 17 THE WITNESS: Yes, sir.

12:37:57 18 THE COURT: Second question has to do with this
12:38:00 19 tactic about handcuffing people to get them to speak to you
12:38:03 20 without fear. So the question is wouldn't this eventually
12:38:06 21 back fire because people in the neighborhood would figure out
12:38:09 22 it was a tactic?

12:38:10 23 THE WITNESS: No.

12:38:12 24 THE COURT: Okay. There you go.

12:38:13 25 Next question has to do with you recall there was the

12:38:18 1 one report or maybe there was one, where it was the Ferguson
12:38:23 2 report where identified is crossed out. Is it the normal
12:38:27 3 practice when somebody crosses that out that they are supposed
12:38:29 4 to initial it or anything like that in your experience? ? In
12:38:32 5 other words, initial the cross out so you know who crossed it
12:38:35 6 out?

12:38:35 7 THE WITNESS: No, I don't know that, Judge.

12:38:37 8 THE COURT: The next couple of questions have to do
12:38:39 9 with the reports that have your name and a signature but it's
12:38:44 10 not your signature. Do you know what I am talking about?

12:38:47 11 THE WITNESS: Yes, I do, Judge.

12:38:48 12 THE COURT: On those situations, does that mean that
12:38:50 13 you -- that you didn't actually see the report with your name
12:38:55 14 on it or did you see it before, did you see it later, how did
12:38:58 15 that work?

12:38:59 16 THE WITNESS: It would be probably later. Otherwise,
12:39:01 17 if I was to see it, I would have signed it myself personally.

12:39:05 18 THE COURT: All right. So then the next question is
12:39:07 19 was it normal or sort of standard practice of the department
12:39:11 20 for one person to sign another detective's name?

12:39:14 21 THE WITNESS: Yes, for overtime, yes.

12:39:19 22 THE COURT: State it again.

12:39:20 23 THE WITNESS: To avoid overtime, ten detectives can't
12:39:25 24 stand around.

12:39:26 25 THE COURT: That answered the follow-up question, so

12:39:28 1 I don't need to ask the follow-up question.

12:39:29 2 The last one has to do with when Mr. Fields was
12:39:33 3 picked up, you said it was on a traffic stop. Do you know who
12:39:37 4 the officer were that stopped him?

12:39:40 5 THE WITNESS: Yes, there's an arrest slip.

12:39:43 6 THE COURT: Were they detectives or patrol officers?

12:39:46 7 THE WITNESS: They were both.

12:39:47 8 THE COURT: Okay. Both.

12:39:48 9 THE WITNESS: It's my understanding, Judge, both.

12:39:50 10 THE COURT: Do you know what the nature of the
12:39:51 11 traffic violation was? Do you remember as you sit there is
12:39:53 12 this.

12:39:53 13 THE WITNESS: No.

12:39:54 14 THE COURT: Okay.

12:39:55 15 THE WITNESS: The initial stop, no, I don't, Judge.

12:39:57 16 THE COURT: All right. Any follow-up based on that.

12:39:59 17 MR. LOEVY: No.

12:40:00 18 MR. KULWIN: I just have one, Judge. Just one
12:40:02 19 question.

12:40:03 20 - - -

12:40:03 21 DAVID O'CALLAGHAN, RECROSS-EXAMINATION

12:40:03 22 BY MR. KULWIN:

12:40:05 23 Q. Can you explain what you mean about the signatures to
12:40:07 24 avoid overtime, what do you mean?

12:40:08 25 A. During the course of the night, the city has a budget, so

12:40:13 1 during the course of the night, many of us work on it and I
12:40:19 2 was a supervisor, so if I allowed ten detectives to sit around
12:40:24 3 until a report was generated and then all sign off, that's 10
12:40:28 4 hours and 10 hours and 10 hours, they're out. One person
12:40:32 5 generates a report and it's common practice for one detective
12:40:36 6 to sign other detective's names.

12:40:38 7 THE COURT: Okay.

12:40:38 8 - - -

12:40:38 9 DAVID O'CALLAGHAN, REDIRECT EXAMINATION

12:40:38 10 BY MR. LOEVY:

12:40:41 11 Q. So that's yes that reports are supposed to get submitted
12:40:44 12 right aayou don't want to wait until the next shift?

12:40:50 13 A. You're incorrect. If you work 24 hours, you better go
12:40:53 14 home and get some sleep before you write a multipage report,
12:40:57 15 no.

12:40:57 16 Q. The idea was to get them submitted as fast as possible,
12:41:00 17 that's why you signed each other's names?

12:41:02 18 A. Right. When it could be, I guess.

12:41:04 19 THE COURT: All right. We are breaking for lunch.

12:41:06 20 We will start back in an hour. We won't -- we will go for --
12:41:10 21 it kind of depends on how long the next witness is. It might
12:41:23 22 be earlier. I will be right back out for the lawyers.

12:41:55 23 (The jury leaves the courtroom.)

12:41:55 24 THE COURT: Anything before we break for lunch?

12:41:57 25 Anything before we break for lunch.

12:41:58 1 MR. LOEVY: My colleagues pointed out, your Honor,
12:42:00 2 that I was doing a lot of this and there is with the pointing.
12:42:03 3 THE COURT: Well, you were indeed.
12:42:04 4 MR. LOEVY: Could we have the record reflect.
12:42:07 5 THE COURT: No, not now. Too late. See you. See
12:42:09 6 you in an hour.
12:42:10 7 (The trial was adjourned at 12:40 p.m. until 1:40 p.m. of
12:42:16 8 this same day and date.)

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